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AMERICAN STATE TRIALS

A Collection of the Important and Interesting Criminal Trials which have taken place in the United States, from the beginning of our Government to the Present Day.

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.

EDITOR

VOLUME VIII

ST. LOUIS

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By JOHN D. LAWSON

ALEXANDER MARTIN, LL.D.

(1833-1902)

A LEADER OF THE ST. LOUIS BAR; JUDGE OF
THE HIGHEST APPELLATE COURT; DEAN
OF THE LAW SCHOOL OF THE UNIVERSITY
OF MISSOURI AND DISTINGUISHED FOR HIS
HIGH CHARACTER AND LEGAL LEARNING.
I AFFECTIONATELY INSCRIBE THIS VOLUME
TO THE MEMORY OF MY FRIEND OF MANY
YEARS.

PREFACE TO VOLUME EIGHT.

Certainly a scene fit for the brush of the artist and the pen of the historian was that one on the New England field when the greatest congregation a preacher ever had, assembled to hear the Reverend David Sutherland's sermon on the oft-selected text, "The Wages of Sin is Death." The parson has always been a familiar figure in the last act of a capital crime, and to this day in the United States he is expected to be the consolation of the condemned man in the death cell and upon the scaffold. In England his duties begin earlier; at a trial for murder which the editor witnessed in England in 1910, while the judge was charging the jury, the sheriff's chaplain in gown and bands entered the court room and took his seat on the bench. And when the jury had returned a verdict of guilty and the judge placing a black cap on his head, had sentenced the prisoner to be hanged by the neck until he was dead, the chaplain rose and pronounced the final words, "And may God have mercy on your soul." The sermon on the Sunday before execution in the presence of all the prisoners in the jail by the Ordinary, was a custom in years gone by, both in England and in this country. (See also the Trial of John Johnson, 2 Am. St. Tr. 537.)

But the history of judicial hangings in America would be searched in vain for another so dramatic and sensational ending as that to the Trial of *Josiah Burnham* (p. 1), for the old reporter writing many years after says that "the like had never been known before in New Hampshire nor have they since been known."

The question suggests itself, after one reads the sermon, saturated as it is with the prevailing theology of the day, was not the whole proceeding illegal? had any court or sheriff or priest a right to add this to the dread sentence of the law? Was it not a "cruel and unusual punishment" expressly prohibited by the United States Constitution?

The *Lincoln Conspirators* (p. 25) were nearly all in the humble walks of life, individuals without education, authority or influence—a druggist's clerk, Herold; a boarding house keeper, Mrs. Surratt; a hospital nurse, Payne; a German wagon painter, Atzerodt; a sceneshifter, Spangler; a country doctor, Mudd, and two young secessionists, without trade or profession, Arnold and O'Laughlin. The leader, John Wilkes Booth, was an actor of some talent and one of a family of renown on the stage, for he was a son of Junius Brutus Booth, the great tragedian of our fathers' day and a brother of Edwin Booth, the great American tragedian of our day. But President Lincoln's murderer, like the assassins of two later Presidents,¹ was undoubtedly insane.

The dramatic yet truthful picture which the biographers of Lincoln have given in their classic history of his life, of the preparations for and the execution

¹ Guiteau, the assassin of President Garfield, hanged June 30, 1882, and Czolgosz, the assassin of President McKinley, electrocuted October 29, 1901, whose trials will appear in later volumes of this series.

Dr. Allan McLane Hamilton, in his "Recollections of an Alienist," just published (New York: George H. Doran Co., 1916), says: "John Wilkes Booth, whom I had seen act a few years previously, was clearly of unsound mind and always had been, but, as is often the case, his madness was of the borderland variety, which is unperceived by the public. In this case, as in many others, his intellectual-emotional instability was mistaken for the eccentricity of genius, and his immorality for ordinary weakness. . . . He was

of the fearful crime which shocked the civilized world, may well be set out here as a fitting introduction to these Trials.

Booth was a young man of twenty-six, strikingly handsome, with a pale olive face, dark eyes, and that ease and grace of manner which came to him of right from his theatrical ancestors. He had played for several seasons with only indifferent success; his value as an actor lay rather in his romantic beauty of person than in any talent or industry he possessed. He was a fanatical secessionist; had assisted at the capture and execution of John Brown, and had imbibed at Richmond and other southern cities where he had played, a furious spirit of partisanship against Lincoln and the Union party. After the re-election of Mr. Lincoln, which rang the knell of the insurrection, Booth, like many of the secessionists North and South, was stung to the quick by disappointment. He visited Canada, consorted with the rebel emissaries there, and at last—whether or not at their instigation cannot certainly be said—conceived a scheme to capture the President and take him to Richmond. He spent a great part of the autumn and winter inducing a small number of loose fish of secession sympathies to join him in this fantastic enterprise. He seemed always well supplied with money, and talked largely of his speculations in oil as a source of income; but his agent afterward testified that he never realized a dollar from that source; that his investments, which were inconsiderable, were a total loss. The winter passed away and nothing was accomplished. On the 4th of March Booth was at the capitol and created a disturbance by trying to force his way through the line of policemen who guarded the passage through which the President walked to the east front of the building. His intentions at this time are not known; he afterward said he lost an excellent chance of killing the President that day.

The whole group was so completely under the ascendancy of Booth that they did not dare disobey him when in his presence; and after the surrender of Lee, in an access of malice and rage which was akin to madness, he called them together and assigned each his part in the new crime, the purpose of which had arisen suddenly in his mind, out of the ruins of the abandoned abduction scheme. This

a dissolute alcoholic, and when in his cups his underlying mental disorder was apparent. . . . There is little doubt in my mind that Booth was one of those persons now regarded as constitutionally inferior and that his full responsibility for this crime was doubtful."

plan was as brief and simple as it was horrible. Powell, alias Payne, the stalwart, brutal, simple-minded boy from Florida, was to murder Seward; Atzerodt, the comic villain of the drama, was assigned to remove Andrew Johnson; Booth reserved for himself the most difficult and most conspicuous rôle of the tragedy; it was Herold's duty to attend him as a page, and aid in his escape. Minor parts were assigned to stage carpenters and other hangers-on, who probably did not understand what it all meant. Herold, Atzerodt and Surratt had previously deposited at a tavern at Surrattsville, Maryland, owned by Mrs. Surratt but kept by a man named Lloyd, a quantity of ropes, carbines, ammunition, and whiskey, which were to be used in the abduction scheme. On the 11th of April Mrs. Surratt, being at the tavern, told Lloyd to have the shooting irons in readiness, and on Friday, the 14th, again visited the place and told him they would probably be called for that night.

From the moment Booth ascertained the President's intention to attend the theater in the evening, his every action was alert and energetic. He and his confederates, Herold, Surratt, and Atzerodt, were seen on horseback in every part of the city. He had a hurried conference with Mrs. Surratt before she started for Lloyd's tavern. He intrusted to an actor named Matthews a carefully prepared statement of his reasons for committing the murder, which he charged him to give to the publisher of the *National Intelligencer*, but which Matthews in the terror and dismay of the night burned without showing to anyone. Booth was perfectly at home in Ford's theater where he was greatly liked by all the employes, without other reason than the sufficient one of his youth and good looks. Either by himself or with the aid of his friends he arranged his whole plan of attack and escape, during the afternoon. He counted upon address and audacity to gain access to the small passage behind the President's box; once there he guarded against interference by an arrangement of a wooden bar to be fastened by a simple mortice in the angle of the wall and the door by which he entered, so that the door could not be opened from without. He even provided for the contingency of not gaining entrance to the box by boring a hole in its door, through which he might either observe the occupants or take aim and shoot. He hired at a livery stable a small, fleet horse, which he showed with pride during the day to barkeepers and loafers among his friends.

The moon rose that night at ten o'clock. A few minutes before that hour he called one of the underlings of the theater to the back door and left him there holding his horse. He then went to a saloon near by, took a drink of brandy, and entering the theater, passed rapidly through the crowd in rear of the dress circle and made his

way to the passage leading to the box. He showed a card to a servant in attendance and was allowed to pass in. He entered noiselessly and turning, fastened the door with the bar he had previously made ready, without disturbing any of the occupants of the box, between whom and himself there yet remained the slight partition and the door through which he had bored the hole. Their eyes were fixed upon the stage; the play was "Our American Cousin," the original version by Tom Taylor, before Sothorn had made a new work of it by his elaboration of the part of Dundreary.

No one, not even the comedian on the stage, could ever remember the last words of the piece that were uttered that night—the last Abraham Lincoln heard upon earth. The whole performance remains in the memory of those who heard it a vague phantasmagoria, the actors the thinnest of specters. The awful tragedy in the box makes everything else seem pale and unreal. Here were five human beings in a narrow space—the greatest man of his time, in the glory of the most stupendous success in our history, the idolized chief of a nation already mighty, with illimitable vistas of grandeur to come; his beloved wife, proud and happy; a pair of betrothed lovers with all the promise of felicity that youth, social position, and wealth could give them; and this young actor, handsome as Endymion upon Latmos, the pet of his little world. The glitter of fame, happiness and ease was upon the entire group, but in an instant everything was to be changed with the blinding swiftness of enchantment. Quick death was to come on the central figure of that company—the central figure we believe of the great and good men of the century. Over all the rest the blackest fates hovered menacingly—fates from which a mother might pray that kindly death would save her children in their infancy. One was to wander with the stain of murder on his soul, with the curses of a world upon his name, with a price set upon his head, in frightful physical pain, till he died a dog's death in a burning barn; the stricken wife was to pass the rest of her days in melancholy and sadness; of those two young lovers, one was to slay the other and then end his life a raving maniac.

The murderer seemed to himself to be taking part in a play. Partisan hate and the furies of brandy had for weeks kept his brain in a morbid state. He felt as if he were playing Brutus off the boards; he posed, expecting applause. Holding a pistol in one hand and a knife in the other, he opened the box door, put the pistol to the President's head and fired; dropping the weapon he took the knife in his right hand, and when Major Rathbone sprang to seize him he struck savagely at him. Major Rathbone received the blow on his left arm, suffering a wide and deep wound. Booth, rushing for-

ward, then placed his left hand on the railing of the box and vaulted lightly over to the stage. It was a high leap, but nothing to such a trained athlete. He was in the habit of introducing what actors call sensational leaps in his plays. In *Macbeth*, when he met the wierd sisters, he leaped from a rock twelve feet high. He would have got safely away but for his spur catching in the folds of the Union flag with which the front of the box was draped. He fell on the stage, the torn flag trailing on his spur, but instantly rose as if receiving no hurt, though in fact the fall had broken his leg; he turned to the audience, brandishing his dripping knife and shouting the state motto of Virginia, "*Sic Semper Tyrannis*," fled rapidly across the stage and out of sight. Major Rathbone had shouted, "Stop him!" The cry went out, "He has shot the President." From the audience, at first stupid with surprise and afterward wild with excitement and horror, two other men jumped upon the stage in pursuit of the flying assassin; but he ran through the familiar passages, leaped upon his horse which was in waiting in the alley behind, rewarded with a kick and a curse the call-boy who had held him, and rode rapidly away in the light of the just-risen moon.

The President scarcely moved; his head dropped forward slightly, his eyes closed. Major Rathbone, at first not regarding his own grievous hurt, rushed to the door of the box to summon aid. He found it barred, and on the outside some one was beating and clamoring for entrance. He opened the door; a young officer named Crawford entered; one or two army surgeons soon followed, and hastily examined the wound. It was at once seen to be mortal. It was afterward ascertained that a large derringer bullet had entered the back of the head, on the left side, and passing through the brain, had lodged just behind the left eye. By direction of Rathbone and Crawford, the President was carried to a house across the street and laid upon a bed in a small room at the rear of the house on the ground floor. Mrs. Lincoln followed half distracted, tenderly cared for by Miss Harris. Rathbone, exhausted by loss of blood, fainted and was carried home. Messengers were sent for members of the Cabinet, for the Surgeon-General, for Dr. Robert K. Stone, the President's family physician; a crowd of people rushed instinctively to the White House and bursting through the doors shouted the dreadful news to Robert Lincoln and Major Hay, who sat gossiping in an upper room, Mr. Nicolay being absent at Charleston, at the flag-raising over Sumter. They ran down stairs. Finding a carriage at the door, they entered it to go to Tenth street. As they were driving away a friend came up and told that Mr. Seward and most of the Cabinet had been murdered. The news was so improbable that they could not help hoping it was all untrue. But when they got to Tenth street and found every thoroughfare blocked by the swiftly

gathering thousands, agitated by tumultuous excitement, they were prepared for the worst. In a few minutes those who had been sent for, and many others, were gathered in the little chamber where the chief of the state lay in his agony. His son was met at the door by Dr. Stone, who with grave tenderness informed him that there was no hope. After a natural outburst of grief young Lincoln devoted himself the rest of the night to soothing and comforting his mother. The President had been shot a few minutes past ten. The wound would have brought instant death to most men, but his vital tenacity was extraordinary. He was, of course, unconscious from the first moment, but he breathed with slow and regular respiration throughout the night. As the dawn came, the lamplight grew pale in the fresher beams, his pulse began to fail; but his face even then was scarcely more haggard than those of the sorrowing group of statesmen and generals around him. His automatic moaning which had continued through the night, ceased; a look of unspeakable peace came upon his worn features; at twenty-two minutes after seven he died. Stanton broke the silence by saying: "Now he belongs to the ages." Dr. Gurley kneeled by the bedside and prayed fervently. The widow came in from the adjoining room, supported by her son, and cast herself with loud outcry on the dead body.²

Had the pistol of Sergeant Boston Corbett not intervened and had Booth been brought to trial, the plea of insanity would have availed him as little as it did Guiteau and Czolgosz. And the verdicts and the sentences on his accomplices, with one exception, time has abundantly vindicated.

Herold (p. 106) was not only in waiting on horseback to guide Booth in his flight, but when he found himself among people he trusted, he could not refrain from boasting: "We are the assassins of the President."³ But there was no fight in him as there was in Booth; when he is surrounded by his pursuers, he cravenly begs to be allowed to surrender, to which Booth responds with an oath: "You damned coward, go; I would not have you stay with me."

² Abraham Lincoln. A History. By John G. Nicolay and John Hay. New York. The Century Co. 1880. (Vol. 10, pp. 289-302.)

³ P. 97.

The guilt of *Atzerodt* (p. 134) is equally clear; he was easily led into the plot, but when it came to the sticking point, like Macbeth, he lacked the nerve to do his part, and to his cowardice President Johnson owed his life.

But *Payne* (p. 168) was made of different stuff.

Booth had done his work efficiently. His principal subordinate, the young Floridan called Payne, had acted with equal audacity and cruelty, but not with equally fatal result. He had made a shambles of the residence of the Secretary of State, but among all his mangled victims there was not one killed. At eight o'clock that night he received his final orders from Booth, who placed in his hands a knife and revolver and a little package like a prescription, and taught him his lesson. Payne was a young man, hardly of age, of herculean strength, of very limited mental capacity, blindly devoted to Booth, who had selected him as the fitting instrument of his mad hatred. He obeyed the orders of his fascinating senior as exactly and as remorselessly as a steel machine. At precisely the moment when Booth entered the theater, Payne came on horseback to the door of Mr. Seward's residence on Lafayette Square. Dismounting, he pretended to be a messenger from the attending physician, with a package of medicine and demanded immediate access to the sick-room of the Secretary, for Mr. Seward had been thrown from his carriage. Only a few moments later he came out of the door, leaped upon his horse and rode leisurely away out Vermont avenue to the eastern suburb. When surgical aid arrived, the quiet house, ordinarily so decorous and well-ordered, the scene of an affectionate home life and an unobtrusive hospitality, looked like a field hospital; five of its inmates were bleeding from ghastly wounds, and two of them—among the highest officials of the nation—it was thought might never see the light of another day; though all providentially recovered.⁴

Payne never denied his crime or his responsibility and his counsel's plea on the trial that he looked upon his act as a patriotic one which should be considered in fixing his punishment, was repudiated by him on the scaffold, where he declared that he had knowingly taken his life in his hands when he endeavored to kill

⁴ Hay and Nicolay, 10-303.

the Secretary of State and had now no fault to find with the government for hanging him.⁵

But what of *Mrs. Surratt*? (P. 216.) Half a century has gone by since she died a felon's death; what is the judgment of the present day on her sentence? The American dislike to inflict capital punishment on a female so often noted in the trials in this series, induced the Court to unite in a recommendation to mercy, which President Johnson, "then in the first flush of his zeal against traitors, disregarded,"⁶ and when *habeas corpus* proceedings were resorted to, the President instructed General Hancock to reply that he had suspended the writ, which caused the judge who had issued it to acquiesce, after remarking that "the *posse committatus* of his court was not able to overcome the armies of the United States under the command of the President."⁷

Fifteen years later Mr. Clappitt, one of Mrs. Surratt's counsel, published an article in the *North American Review*⁸ which threw some new light on the case. In this Mr. Clappitt admits that her house was a secret rendezvous of those who plotted against the government and that the evidence given at the trial wove around her a chain of circumstances difficult to explain. But he maintains that she did not take part in the plot to murder President Lincoln or even know that the assassination was being planned. The two grave facts, and on which her conviction was mainly based, were, first, her conveying to the Lloyd tavern, where Booth was to receive them in his flight after the assassination, of the spyglass and revolver, and the

⁵ 131 North Am. Rev. 239.

⁶ Hay and Nicolay, 10-313.

⁷ 131 North Am. Rev. 238.

⁸ See *post*, p. 171.

attempt of Payne to find shelter in her house after his escape was cut off in every other direction. As to the former Mr. Clappitt says:

Mrs. Surratt had been greatly troubled about certain financial matters relating to her estate in Maryland. Relief had been suggested by a friend, a gentleman of character whom we called as a witness in the endeavor to establish the cause of her visit to Marlborough Court House, and at whose instance, by a letter which we offered in evidence, and was by him identified, she had been urged to meet him on that day at that point for the purpose of arranging these matters. The witness Weichmann was often the companion of her journeys to and from her estate. John Wilkes Booth, the frequent visitor, occasionally loaned her his horse and buggy for that purpose. On the morning preceding the assassination, Mrs. Surratt received the note demanding her instant attendance at Upper Marlborough Court House. She communicated this fact to Weichmann, and requested him to obtain from Booth his horse and buggy for that purpose. This was admitted by Weichmann on cross-examination. Weichmann went immediately to Booth and asked that favor, stating the object. It was on that morning (Good Friday) that Booth learned at the theater that the President would be present at the performance in the evening, and had thereupon gathered the conspirators in a meeting at the Herndon House, and there prepared and arranged the form of the deadly attack upon the President, and his mode of escape after the commission of the crime. When Weichmann approached Booth, it was just after this meeting of the conspirators at which these and other details of the assassination had been arranged, and while Booth was still revolving in his mind the means of escape. A pistol and spyglass would be burdensome upon his person when making the desperate leap from the private box in the theater. Booth replied to Weichmann that he was sorry he could not accommodate Mrs. Surratt, as he had sold his horse and buggy. Weichmann was about to return with this answer when Booth said, "Here! take this ten dollars and hire one." Weichmann hired the conveyance, and as he and Mrs. Surratt were seated in the buggy, about to drive from her house, Booth made his appearance hastily upon the scene, and requested Mrs. Surratt to hand the bundle to John M. Lloyd, the tavern keeper at Surrattsville, as she would have to drive through that village on her way to Marlborough Court House. As Mrs. Surratt was the recipient of this and other kindnesses from Booth, could she have done else than accede to so simple a request? Weichmann further testified that, when Mrs. Surratt saw Lloyd at Surrattsville, she did

not alight from the buggy, but called him to her side and gave him the bundle. Lloyd testified that when she handed him the bundle she said: "Here are the shooting-irons; Booth will call for them to-night." When the fact is made to appear that Booth was a frequenter of that neighborhood, and an intimate of the man Lloyd, to whom was delivered the bundle containing the pistols and spyglass, and it is remembered that Lloyd was the keeper of the hotel at which Booth often stopped while hunting in the neighborhood, is it singular that Mrs. Surratt should have made the jocular remark, "Here are the shooting-irons?" It is no doubt true that Booth told her the bundle contained pistols, and that he would call for them that night. And yet, in that conveyance of arms and in that remark, is the point of evidence on which the prosecution principally sought to connect the unfortunate woman with the commission of the crime, as an accessory before the fact. And on such evidence was this woman condemned to an ignominious death upon the scaffold! Booth instantly saw his opportunity to convey his arms to a point on his route of escape, through the journey of Mrs. Surratt to Marlborough Court House, and she, having been made the innocent means of conveyance, was condemned and executed as a murderess.

As to the appearance of Payne at Mrs. Surratt's house on the night following that of the assassination, Mr. Clappitt says⁹ that it was to take counsel with John H. Surratt that took Payne to the Surratt house, and that on the day of his execution he declared to General Hartranft that Mrs. Surratt was innocent not only of the plot to assassinate the President, but that she had no knowledge of the abduction plot; that nothing was ever said to her about it and that her name was never mentioned by the parties concerned.¹⁰ This may be true; certainly if Weichmann, who was quite as intimate with the boarders and visitors at the house as Mrs. Surratt could have been, told the truth when he declared that he knew nothing about it, Mrs. Surratt may have been equally ignorant. Therefore, though the circumstantial evidence which was presented

⁹ See *post*, p. 171.

¹⁰ 131 North Am. Rev. 241.

at the trial would have justified any court in finding her guilty, yet it is possible that, after all, Mrs. Sur-ratt was a victim, not of the tribunal which tried her, but of John Wilkes Booth, who in his insane determination to murder the President, was willing to sacrifice every foe and every friend.

There is no proof that either *O'Laughlin* (p. 310) or *Arnold* (p. 324) was acquainted by Booth with his intention to assassinate the President at Ford's theater on the night of Good Friday. He did not need them in his plan and after Arnold's abandonment of the kidnaping scheme would hardly have trusted them with the greater secret.

The stupid and besotted sceneshifter, *Spangler* (p. 374), would have followed the actor he worshipped anywhere, and it is almost certain that his dull brain hardly realized the terrible crime he was helping to execute. He did not deserve hanging, but, like O'Laughlin and Arnold, he certainly deserved the sentence of imprisonment which was awarded to him.

Of *Dr. Samuel A. Mudd* (p. 423), the only one of the male prisoners who had either education or social standing, no one can believe that he was an accomplice of Booth; he was rather another of Booth's tools and victims. To the day of his death he denied the justice of his sentence^a and yet his conviction was based almost entirely on his own declarations; reason enough when they turned out to be false, for the judgment which the Court pronounced. Could it be possible that a professional man of experience could have in his house for a dozen hours a patient whose broken leg he sets, whom he provides with a crutch and whom he

^a The Life of Dr. Samuel A. Mudd. Edited by his daughter, Nettie Mudd. New York and Washington: The Neale Publishing Co. 1906.

starts again on his journey, and this patient a man whom he had known for some months, had met socially several times and had business relations with more than once and who actually had been before this a guest in his own house? Is it within the limits of reason that he should not recognize him under these circumstances? It would have been unthinkable for the Court to have believed his story in the face of these facts. Dr. Mudd was no common criminal; the blood of no innocent man was on his hands, but in the eye of the law he was guilty as an accessory after the fact in assisting a criminal to escape from justice. He was a Southern man and sympathizer, and it would have been strange indeed had he acted differently when appealed to by a fleeing and hunted outlaw. His act was not a disgraceful one; except for the eminent character of the victim most people would consider it not morally wrong; but it was a legal wrong, and a crime.

Fortunately for the good name of the American nation, though the prosecution alleged that the murder had been "incited and encouraged" by Jefferson Davis and other Confederate leaders, the only evidence produced was that of two witnesses, the first of whom testified that when the news of the assassination reached the President of the Confederacy, he expressed some gratification;¹¹ the second stating that he was an officer in the Confederate service on the staff of General Johnson; that he had seen Booth in the Confederate camp when the matter of the assassination of President Lincoln was discussed by the officers.¹² But it turned out that this witness was a Prussian who had deserted from the Union Army and

¹¹ P. 63.

¹² P. 56.

joined the other force as a private; that he lied when he said he was a Confederate officer, and General Johnson and several of his staff swore that Booth was never in their camp and that the assassination of President Lincoln was never discussed there. "I wish to say," indignantly exclaimed Colonel Douglass to the Court on the trial, "of the officers of our brigade, that their gallantry as men and as soldiers would forbid them from being implicated in any such plot as the assassination of Mr. Lincoln, and in their behalf I desire to say that I do not believe they knew anything about it, or in the least degree sympathized with so unrighteous an act."¹³

As to the testimony of the first witness, as Nicolay and Hay, President Lincoln's two secretaries and close personal friends point out in their history,¹⁴ so far from its proving any direct complicity in the crime, it would rather prove the opposite, as a conscious murderer usually conceals his malice. Jefferson Davis most emphatically denied the story, and had there been the slightest foundation for the charge, would it have been likely that three such staunch supporters of the Union and opponents of slavery as Horace Greeley, Gerritt Smith and Cornelius Vanderbilt when the deposed Confederate President was indicted for high treason should instantly volunteer to become his bondsmen and thus obtain his release from imprisonment—an indictment which was never brought to trial?

It was not strange that when in the midst of their rejoicing that the war was over and the Union preserved, there came to the Nation, like a thunderbolt from a clear sky, the news that Abraham Lincoln, their beloved President, had fallen by the hand of an

¹³ P. 247.

¹⁴ Hay and Nicolay, Vol. 10, p. 313.

assassin, a great rage should take possession of the people, and cries of vengeance arise not only against the perpetrators of the crime but upon the leaders of the Confederacy. This, however, did not last very long; the American showed himself to be a generous victor and public opinion soon turned to amnesty and pardon to all the participants in the rebellion. But this did not include acts which were not justified by the laws of war. Yet when the Government prosecutors had made a patient search for a Confederate Commander who had so violated the laws which civilized nations had agreed should be binding on them on land and water in time of war as to have lost all right to be called an honorable enemy, and deserved to be treated only as a common malefactor and murderer, they found but one man in the whole Southern Army, *and he was a German.*

The trial of *Captain Henry Wirz* (p. 657), the Commandant of the military prison at Andersonville, shows conclusively that there was at that place a want of proper hospital accommodation, an inadequate supply of tents for the sick, a want of proper drainage; that the prison was located in a section barren of resources; that there was an inadequate supply of cooking utensils, and of space within the prison for exercise, a crowding of the prisoners, a want of shelter, whether of huts, tents or trees; that the drainage from the sinks of the prison passed through the hospital grounds; that there was frequent delay in obtaining medical supplies, and a frequent deficiency or even total failure in quantity, an inadequate supply of medical officers, a want of money to buy vegetables for the sick; that there was an habitual issue of unbolted meal which, when baked, made a coarse and irritating food, producing diarrhoea and dysentery; that the accessi-

ble water was unfit for use, the stream from which it was taken receiving the surface drainage from the camps of the garrison situated on it. With these special causes of discomfort and disease some thirty-three thousand men were crowded together, sheltered only by blankets and low hovels, densely and irregularly arranged, preventing free circulation and engendering foul and noxious vapors, the atmosphere being loaded with the foul exhalations of human excrements, fermentation of bread, and all other imaginable kinds of filth. Flies swarmed over the wounds and over filth of every description, and the dirty, imperfectly-washed and scanty rags, the limited number of sponges and wash bowls circulated the gangrenous matter everywhere. No wonder that death was common among the prisoners and that in less than eight months from the establishment of the prison more than ten thousand Federal prisoners died—nearly one-third of the entire number confined.

On the other hand, it was just as conclusively proved that the hospitals for prisoners of war were placed on the same footing as other Confederate States' hospitals in all respects; that the hospital ration was fixed at the same rates of issues made to soldiers in the field, and special requisitions directed in case greater allowance should be required of any particular article; that the Confederate War Department and Adjutant-General's Office recognized the fact that the condition of the prison at Andersonville was a reproach to the Confederate States as a nation, and called very loudly for interposition; that the Surgeon-General, in September, 1864, ordered the surgeon in charge of the Andersonville Prison Hospital to visit each station and see that such arrangements were made for the sick as their wants might require, and use all the means

for their comfort that the Government could possibly furnish; and General Cooper, the Adjutant-General, certified in 1871 that "the President and Secretary of War always manifested great anxiety that the prisoners should be kindly treated and amply provided with food to the extent of our means, and they both used their best means and exertions to these ends."

There was no lack of food or medicines in the North, and yet Dr. Stevenson in his book, "The Southern Side,"¹ shows that while of 270,000 Federal prisoners in Confederate hands 22,570 died; of 222,000 Confederate prisoners in Federal hands 26,436 died. This great mortality was largely due to the lack of surgical and hygienic knowledge fifty years ago—the great discoveries of Lister and Pasteur had not then been given to the world. To determine and apportion the degree of responsibility which attached to the Confederacy as a nation and as individuals for the deaths in their military prisons during the war is a difficult task. At a time when their own armies were marching without shoes and even General Lee's soldiers were almost without bread, it is clear that abundant clothing and food could hardly be expected to be furnished to captive enemies.

The laws of war nowhere hold criminally liable the belligerent commander who neglects to do all within his power for his prisoners; and though there was much that the Confederate authorities might have done which they grievously left undone (always excepting the Confederate surgeons, especially those in higher positions, who were humane and faithful men who strove to lessen the evils which were beyond their power to overcome), yet it was not for these things that Wirz, the "demon of Andersonville," was justly

¹ See *post*, p. 666.

hanged. It was not because he was the head of the prison and failed to give the prisoners proper food, shelter and medical attendance; not even because he was cruel and brutal and a thief who stole from them the supplies which were sent to them from the North, but because he was a common murderer, directing his guards often against their will to inflict on the wretched prisoners cruel punishments and even death for trifling offenses and again and again with his own hands murdering his helpless victims, gloating over their miseries and deaths with the beastly boast, "I am killing more Yankees here than Lee is killing at the front."

We are today at war with a nation that has violated every rule of civilized warfare; that has adopted a policy of frightfulness which spares neither childhood, womanhood nor age; that has revived every barbaric method of torture and has adopted every scientific method of causing human suffering; that absolutely ignores the rights of neutrals and that has accustomed the whole world to deeds of cruelty which three years ago were thought to be possible only among savages. In a short time the American soldier will for the first time in our history face an enemy which scoffs at international law, which breaks treaties at its will, which wantonly disregards all rules of civilized warfare; which premeditatively murders in cold blood not only prisoners of war but thousands of helpless women and little innocent children, brutally dismembering them limb from limb, caring not at all whether they are enemy citizens or neutrals; in whose heart there is no precept of sympathy, compassion or mercy; an enemy which poisons wells, murders in cold blood priests and ministers, destroys churches and monuments of art with fiendish delight; sinks hospital ships and Red

Cross vessels carrying relief to the distressed and neutral vessels of every nation and murders their passengers as they try to escape in small boats; takes women and men into slavery and violates the virgin daughters and virtuous wives of its conquered foes.

This, then, is an opportune time to print the trial of Wirz, the only case in this country where, after a war, an enemy commander has been brought to the bar of public justice to answer for a war crime.

Over three hundred years have gone by since Hugo Grotius, the father of modern international law, published his great work, because, to use his own words:

"I saw prevailing throughout the Christian world a license in making war of which even barbarous nations would have been ashamed, recourse being had to arms for slight reason, or no reason, and when arms were once taken up, all reverence for divine and human law was thrown away, just as if men were henceforth authorized to commit all crime without restraint."

And because the world was sick of war it welcomed Grotius' appeal to it to adopt a new system which would force statesmen to follow the practices of honor and justice and force soldiers to curb their ferocity and deal with their enemies with humanity. Very soon thereafter the nations of the civilized world had agreed upon a sort of international code, and as the centuries rolled by these rules had been extended until we had the Hague Conventions of 1899 and 1907, which still further extended the principles of justice for the mitigation of warfare when war could not be avoided. For more than a century war between members of the family of nations had been conducted with a regard for humanity and especially for the rights of neutral peoples. In the summer of 1914 we were all living in a sort of happy content, with the fond assurance that if there should unfortunately ever be another great war

it would be carried on more mercifully and more in the spirit of Christianity than any that had ever been waged in the past. Then suddenly Germany appeared like a wild and mad beast from the jungle, tearing through Europe with a mad desire to destroy everything on the earth worth living for and restrained by nothing but its own ambition and greed. In the light of the desolation of Belgium and France by the modern Hun, the frightfulness of Atilla and the cruelties of Alva and the Spanish Fury as told by Motley seem hardly worth getting excited over. But it is good for an American citizen to turn from the terrible record of German horrors¹ to the histories of our own wars.

When President Wilson spoke to the Confederate veterans who met at their Reunion at Washington last June, he told them that the proudest of their memories of the war was not of the heroic things that were done on both sides, but was the remembrance that men in those days fought in something like the old spirit of chivalric gallantry.

We read in our own histories that when General Lee invaded Maryland, he issued an order to his army that the unarmed citizen should not be disturbed either in person or property and that plunder meant death; that once when General Longstreet was being sorely pressed in his retreat and it was suggested that mines should be placed on the roads over which the Union

¹ See for example *The German Terror in Belgium; An Historical Record*, by Andrew T. Toynbee, late fellow of Balliol College, Oxford. New York: George H. Doran & Co., 1917. *The Crimes of Germany*. London: The Field & Queen Co., 1917. *The Invasion and the War in Belgium, from Liege to the Yser*. By Leon Van Der Essen, Professor of History at the University of Louvain. T. Fisher Unwin, London.

Army would pass, he instantly replied, "No, that would not be fighting fair;" that Admiral Semmes, though he almost swept the Northern commerce from the seas, never destroyed the life of a sailor or passenger and that on more than one occasion on capturing an enemy ship and finding it filled with passengers whom he could not take care of, he saluted and went his way; that though houses were often destroyed and looted by individuals, it was never with the approval of the Commanders, and that no Southern woman suffered outrage at the hands of Northern soldiers; no ministers of the Gospel were shot or little children murdered; that when Johnson surrendered to Sherman and Lee to Grant the terms made by the Union Generals were so generous as to meet criticism and disapproval in Washington; that after the Spanish war our prisoners who were being taken back to Spain cheered the Stars and Stripes as they passed out of the American harbor and that one of our warships having captured and brought home off the coast of Cuba some Spanish fishing smacks, our Supreme Court ordered them to be returned to the owners, saying that we were not making war against the poor fishermen, even if they were technically our enemies. You can read the same in the French and English histories—of the French Commander who, finding that his march to attack the English force had brought him to the rear instead of the front of the line, sends word of this to the Englishman so that he shall not be taken by surprise; of the Commander at Fontenay who calls on the English General to fire first; of Admiral Nelson's words, "When sailors become my prisoners I become their protectors;" and of the message of the English naval officer: "We have had a sharp battle with two German destroyers, one of which we sank,

but fortunately we were able to save most of the German crew."

America and her allies can tell of scores of splendid acts like these, while Germany is dropping bombs on school houses in undefended cities, and is shelling the boats in which innocent passengers are escaping from torpedoed vessels. The word chivalry, which Frenchmen and Englishmen and Americans prize so much, is not to be found in the German military lexicon.

History repeats itself and when this great war is over we shall have come around to the place we were when Grotius wrote. What shall the world do this time? The international rules of war which we were living under three years ago were made not only to mitigate the horrors of war but to allow men who had fought against each other to live together afterwards in peace. But as it is impossible to make an agreement with a nation that announces that it is not bound by nor will it keep its treaties unless it chooses, it seems clear that we cannot make peace at all until Germany is powerless to break her engagements. And as she cannot be treated as a conquered foe in a fair fight, she must be condemned, sentenced and executed as a dangerous criminal. The civilized world must exact reparation from those who are responsible for these gross violations of the rules of war. The military murderers in Germany today, even though they are wearing the iron cross in recognition of their crimes, must be brought to justice as Captain Henry Wirz was in 1865. For the world war in which we are now engaged is more than a war between democracy and autocracy; it is a war between civilization and barbarism.

The trial of *Leonard Simons* and his associate (p. 875) for libel, shows the counsel for the People in-

voking that almost forgotten principle of the old criminal law that in a prosecution of this kind, one could not show in his defense that what he published was actually the truth. In a civil action for libel the Common law always allowed the defendant to set up the truth of the charge, because here the claim of the plaintiff was based on the damage which the charge had done to his reputation, and if it turned out that he had no right to his good reputation because what was said about him was simply the truth, the law would not make the defendant pay him damages. But the criminal prosecution was based not on the injury which the defamed man had sustained, but on the idea that the State had suffered a public injury, for the defamatory publication would be likely to provoke the party injured and his friends to revenge and thus to cause a breach of the public peace. And the law carried this principle so far as to lay it down as a maxim that "the greater the truth the greater the libel," meaning by this that the disclosure of some disgraceful but true fact about a man would be more likely to sting him to revenge on the publisher of it than if the charge were a falsehood which he could easily refute. In New York, as in other states, the law was at first so far altered as to permit the defense to show that the true publication was made for the public interest; but later most of our State constitutions expressly declared that the truth of an alleged libel shall be a good defense in criminal prosecutions as well as in civil actions.

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THE TRIAL OF JOSIAH BURNHAM FOR THE MURDER OF CAPTAIN JOSEPH STARK- WEATHER, PLYMOUTH, NEW HAMPSHIRE, 1806.

THE NARRATIVE.

In the days when a murderer and an unfortunate debtor were often imprisoned in the same jail and the same cell, Captain Joseph Starkweather and Russell Freeman, Esq., found themselves in something of this situation. The Captain was a respectable citizen of Haverhill, N. H., whose only crime was that he owed money that he was unable to pay. Mr. Russell had been a merchant in the neighboring town of Haverhill and was highly thought of in his community, had been a magistrate and had held other offices of trust, but had been unfortunate in business, was beset by debts and embarrassed by suits instigated by creditors. There was no bankruptcy law then and the penalty for debt was imprisonment. The third occupant of the cell in which these two worthy gentlemen were confined was a man named Josiah Burnham,^a who

^aFor a period of more than thirty years Josiah Burnham was a well-known character in the towns of Bath, Coventry (Benton), Warren and Haverhill. He was land surveyor, schoolmaster, blacksmith, speculator, almost constantly engaged in litigation, and bearing anything but a good reputation for honesty and morality. During the latter part of his career he was hopelessly in debt, and there is good reason to believe that he had been confined in jail for debt and possibly for certain dishonest transactions for some six years previous to his crime of murder.

He came of good New England stock, was a native of Kensington (Farmington), Connecticut, born August 12, 1743, the son of Josiah and Ruth (Norton) Burnham. His grandfather was the Rev. William Burnham, a graduate of Harvard College, class of 1702, and was pastor of the church at Kensington (Farmington) for a period of thirty-eight years. He was one of the leading clergymen of the Connecticut colony, and according to Hinman was "a gentleman of great wealth." His wife, the grandmother of Josiah, was a member of the famous Wolcott family. The Rev. William Burnham was the son of William and Elizabeth Loomis Burnham of Westfield, Conn., and the grandson of Thomas Burnham, born in England in 1617, educated as a lawyer and who, emigrating to America sometime prior to 1649, became one of the early and most influential

had been engaged in some large swindling operations, for which he was awaiting trial, was a criminal co-respondent in a pending action for divorce, and was also charged with forsettlers of Hartford, Conn., and one of the largest landowners in the colony.

Josiah Burnham married Elizabeth Porter and must have come to Coos County prior to 1774, since, in an indented article of agreement made on the 15th day of June in that year, between himself and David Whiting of Greenwich and Joseph Smith, both of the County of Fairfield and Colony of Connecticut, he is named as of Bath, County of Grafton and Province of New Hampshire. The character of this agreement gives a glimpse of the character and personality of Burnham. Whiting and Smith were owners of nine of the sixty-nine shares or rights in the then undivided, unsurveyed and unsettled town of Coventry (Benton). Burnham was for his part to go to Coventry and "pitch, lot out and secure these nine shares as he, the said Burnham, shall see fit, as though he was the actual owner and possessor of the same, for the term of one year. Said Burnham agrees to go on said town and make some pitches and corner some lots within the term of three weeks, and to move his family or else send or have on said town two settlers, if he is not on himself within the term of one year." For this service Burnham was to be given by Whiting and Smith good and lawful deeds of four and one-half rights of land in said town. Before any division of land was made by the proprietors, each right or share amounted to about 400 acres of land. Burnham was to be first on the ground before any such division, and by making enough of settlement to cover the terms of the charter, and agreements made by the proprietors regarding settlement was to choose, survey and establish corners of lots which would enable Whiting and Smith to hold them against the other proprietors when divisions should be made after subsequent surveys. The agreement and transaction was a most questionable one from a moral standpoint. The Connecticut proprietors evidently knew their man. It does not appear that the agreement was completely consummated, since there is nowhere a record of any deed from Whiting and Smith to Burnham, but there is ample evidence that Burnham, who was a competent land surveyor, did attempt to survey and mark the lines of various lots on Coventry Meadows and near the Warren line, which became, with the claims he made, a source of embarrassment and annoyance to the proprietors when they came to make surveys for the first division of lands. The "Burnham lines" were for a long time a source of trouble. Burnham also under this agreement laid claim to certain lands which involved him in serious litigation for years. That he was a competent land surveyor and that he had enjoyed excellent educational advantages is evident from the fact that he was one of the early schoolmasters in the town of Warren, and that, after that town had settled its boundary difficulties, though it had previously been divided into lots, he was engaged to re-survey

gery, at that time a capital offense nearly everywhere. He was a bad citizen and a man of ungovernable temper, and becoming angry at some allusions made by his companions to

the entire town and make an accurate plan of his work. He entered upon this work, re-run the lots, established the range lines, surveyed the divisions, making everything harmonize as much as possible with the old surveys, the proprietors' drawing of lots and former sales by deed. It was a difficult task which he undertook, and its accomplishment was the work of several years, but he completed this undertaking to the satisfaction of the proprietors, who made him handsome compensation. His plan of the town of Warren has been the basis of all plans and real estate transactions in that town since its completion in 1795.

Soon after his agreement with Whiting and Smith, Burnham evidently went to Coventry (Benton), making his home on the Meadows where, when not engaged in other matters, he followed at times the occupation of blacksmith. But one of his chief occupations appears to have been litigation, since, after the Grafton County Courts were opened in 1783, there were few terms down to 1799 in which his name does not appear as party in one or more causes. He was usually a loser. Many of these suits related to lands claimed by him or to matters involved in his real estate transactions. He was engaged for several years in litigation with Samuel Atkinson of Boscowen, relative to lands in Coventry to which he claimed title through his agreement with Whiting and Smith, the result of which was that Atkinson was finally successful. In 1789 Nathaniel Merrill of Haverhill began suit against him to recover for land in Landaff, deeded to Merrill by Burnham in 1784, Merrill alleging that Burnham did not own the land. Merrill secured judgment in the Court of Common Pleas, which was later reaffirmed by the higher court, and execution was issued against Burnham in 1794.

The crisis in Burnham's affairs in 1799 came at the June term of the Superior Court of Judicature, when no less than seven judgments were rendered against him and execution issued, on six of which, because of his failure to satisfy, he was committed to the jail at Haverhill. It is more than probable that he remained in jail during the next six years. The executions were none of them for large amounts; the largest being in favor of Samuel Salisbury of Boston for \$93.18—but there is no record that any of these were ever paid, and under the law of that time a prisoner for debt could be kept in confinement until the debt was paid, without regard to time. A power of attorney given by Burnham, February 13, 1804, to his wife, Elizabeth Burnham, to transact all kinds of business for him in the State of Massachusetts—presumably with Samuel Salisbury—would indicate that he was then in jail. The late Judge George W. Nesmith, in an article in the *Granite Monthly*, December, 1880, says that, aside from his confinement for debt, Burnham was also charged with being a criminal co-respondent in a pending divorce suit and that his murder of Starkweather and Freeman was caused

the divorce suit, he secretly fashioned a knife from an old scythe and one morning stabbed them both to death. He was tried for the murder of the Captain and very speedily convicted and eight months later was hanged in the presence of a great concourse of people.

And before he was turned off, the murderer and the 10,000 spectators were obliged to listen to a long and eloquent sermon by the Reverend David Sutherland, an eminent divine of New Hampshire.

THE TRIAL.¹

In the Superior Court of Judicature, Plymouth, New Hampshire, 1806.

HON. JEREMIAH SMITH,² *Chief Justice.*

HON. PAINE WINGATE,³

HON. ARTHUR LIVERMORE,⁴ } *Associate Judges.*

by their rallying him on this accusation, but there is no evidence of such a charge against him in the existing court records. It has been said that he was also charged with forgery, but of such a charge there is no official record and this tradition may have been evolved from the action brought against him by Nathaniel Merrill, for giving a deed of land which he did not own. "Josiah Burnham, His Trial and Execution," p. 4.

¹*Bibliography.* *"Josiah Burnham, His Trial, and Execution for Murder, with Sermon, etc., etc. Woodsville, N. H., News, Book and Job Print, 1909. Only 25 copies printed."

*"A sermon delivered at Haverhill, New Hampshire, August 13, 1806, at the Execution of Josiah Burnham, who was executed for the murder of Russell Freeman, Esq., and Capt. Joseph Starkweather, in Haverhill Jail, on the 17th day of December, 1805. By David Sutherland, Minister of the Gospel, Bath, N. H. 'The wicked is driven away in his wickedness.'—Solomon. Hanover, N. H. Printed by Moses Davis, 1806."

²SMITH, JEREMIAH. (1759-1812). Born Peterborough, N. H. Representative from New Hampshire in the Second, Third, Fourth and Fifth Congresses; Governor of New Hampshire, 1809-10; Chief Justice Superior Court, for many years. Died at Dover, N. H.

³WINGATE, PAINE. (1739-1838). Born Amesbury, Mass. Delegate from New Hampshire to Continental Congress; United States Senator, 1789-1793; Representative in Congress, 1793-1795; Judge Superior Court, 1798-1809. Died in Stratham, N. H.

⁴LIVERMORE, ARTHUR. (1776-1853). Born Londonderry, N. H. Judge Superior Court, 1799-1816; Judge Common Pleas, 1825-1833; Representative in Congress, 1817-1821-1823-1825. Died in Campton, N. H.

June 2.

The Grand Jury had heretofore found two indictments against Burnham, one for the murder of Russell Freeman and the other for the murder of Joseph Starkweather, Jr. The prisoner was set on trial today under the latter indictment.⁵ He pleaded *not guilty*. Having no counsel the COURT appointed *Alden Sprague*, of Haverhill, and *Daniel Webster*,⁶ of Boscawen, to defend him.

George Sullivan,⁷ Attorney General, for the State.

⁵ The jurors for the State of New Hampshire upon their oath present, that Josiah Burnham of Haverhill, in the County of Grafton aforesaid, laborer, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the seventeenth day of December in the year of our Lord, one thousand eight hundred and five, with force and arms, at Haverhill aforesaid, in the county aforesaid, in and upon one Joseph Starkweather, Junior, in the peace of God and said State then and there being, feloniously, wilfully and of his malice aforethought, did make an assault; and that he, the said Josiah Burnham, with a certain knife made of iron and steel, of the value of one dollar, which he the said Josiah Burnham in his right hand then and there had and held, the said Joseph Starkweather, Junior, in and upon the left side of the body of him, the said Joseph Starkweather, Junior, then and there feloniously, wilfully and of his malice aforethought, did strike, thrust, stab and penetrate, giving unto the said Joseph Starkweather, Junior, then and there with the knife aforesaid, one mortal wound of the breadth of two inches, and of the depth of six inches, of which said mortal wound he, the said Joseph Starkweather, Junior, at Haverhill aforesaid, in the county aforesaid, from the said seventeenth day of December aforesaid, until the eighteenth day of the month of December aforesaid did languish, and languishingly did live, on which same eighteenth day of December aforesaid, the said Joseph Starkweather, Junior, at Haverhill aforesaid, in the county aforesaid, of the said mortal wound, did die.

And so the jurors aforesaid, upon their oath aforesaid, do say that the said Josiah Burnham, him the said Joseph Starkweather, Junior, in manner and form aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder against the peace and dignity of the State.

⁶ See 7 Am. St. Rep., 414.

⁷ SULLIVAN, GEORGE. (1771-1838.) Born Durham, N. H. Member of the General Court, State Senator, Representative in Congress and for twenty-one years Attorney General of New Hampshire. Died in Exeter, N. H.

The following jurors were sworn :

David Atwood, Alexandria; Daniel Pingree, Bridgewater; Benjamin Boardman, Bridgewater; Samuel Noyes, Campton; David Gibson, Wentworth; Ebenezer Kendall, Hebron; William Powers, Groton; William Cox, Holderness; Timothy Sargent, 3rd, New Chester; Jonathan Cummings, Plymouth; Andrew Willey, Trecothick; John P. Palmer, Wentworth.

THE EVIDENCE.

Captain Joseph Starkweather and Russell Freeman were both confined in the Haverhill prison for debt. They and the prisoner occupied the same room. On the evening of December 17, while the Captain was out of the room Burnham suddenly drew a long knife which he carried in a sheath and stabbed Freeman in the bowels. Starkweather, hearing the noise rushed into the room and as he came to Russell's assistance the prisoner made a pass at him and stabbed him in the side. He then made an attempt to cut his throat which the knife pierced near the collar bone; he then stabbed him four times more

in the body and, seeing him weak from loss of blood, he left him and flew at Russell, who was sitting on the floor trying to prevent his entrails from escaping. The prisoner was attempting to stab himself when the noise attracted the attention of the guards who after considerable exertion secured the murderer who told them that he had done God's service. Freeman lived three hours and Starkweather only two. These facts were proved by several witnesses for the State, the prisoner tendering no witnesses or evidence in his behalf.

Mr. Webster^s addressed the jury for the *Prisoner*, which after a short consultation returned a verdict of *Guilty*.

June 3.

The *Prisoner* being asked if he had aught to say why sentence of death should not be pronounced against him, replied that he had nothing to say.

^s "Neither in the records of the court nor in the newspaper accounts of the trial is the name of Daniel Webster mentioned as one of the counsel for the defense, but this perhaps is not strange, as this trial occurred in the second year of his professional career, and the world had not discovered Daniel Webster. In later years, in 1851, Webster, in the course of a conversation with the late Judge Nesmith of Franklin, in which he reviewed some of the early legal controversies in which he had been engaged, alluded to

The CHIEF JUSTICE, this morning, in a solemn and impressive manner, pronounced against the prisoner the awful sentence of the law, in which he stated the aggravation of his offense, the candid and impartial trial which had been granted him, and the clearness of the proof against him, and after recommending to him sincere repentance for his sins and a firm reliance on his Saviour for mercy, condemned him to death by hanging, on the fifteenth day of July next.

The *Prisoner* appeared affected with the heinousness of his offense, and regretted that he had not prevented the trouble and expense of a public trial by pleading guilty.

THE EXECUTION.

Application being made to Governor John Langdon, for a postponement on the ground that the prisoner "may have a further time to prepare for death," a reprieve of four weeks was granted, and August 12, 1806, was set as the day. By a singular coincidence it was the murderer's birthday anniversary.

The execution of Burnham was a memorable event. The Sheriff of the county, David Webster,⁹ was the executioner. There had previously been but one execution in Grafton County, when, ten

this trial of Burnham and remarked: 'Burnham had no witnesses. He could not bring past good character to his aid, nor could we urge the plea of insanity in his behalf. At this stage of the case Mr. Sprague, the senior counsel, declined to argue in defense of Burnham and proposed to submit his case to the tender mercies of the Court. I interfered with this proposition and claimed the privilege to present my views of the case. I made my first and the only solitary argument of my whole life against capital punishment and the proper time for a lawyer to urge this defense is when he is young and has no matters of fact or law upon which he can found a better defense.' "Josiah Burnham, His Trial, Etc.," *ante*, p. 4.

⁹ The late Arthur Livermore relates an incident concerning the disposition of the bodies of the murdered man. In a letter to the Grafton and Coos Bar Association, under date of June 30, 1894, he wrote:

David Webster, of Plymouth, was sheriff of the county, and had himself assumed the custody of the jail, and moved into the jail house, where the murders were committed. He was a man of great respectability, of plain sense and probity. He had been out with Major Robert Rogers, as one of his famous troop of Rangers, but he was not supposed to be learned.

When the horror of the strange homicide had in a measure subsided, Col. Webster naturally began to prepare for the removal

years before, July 28, 1796, Thomas Palmer, of Lebanon, was hung, and there have been but two since, up to 1909, that of Rev. Enos G. Dudley, who was hung in the jail yard in May, 1849, for the murder of his wife, and the other that of Samuel Mills, whose execution for the murder of George Maxwell of Franconia took place also in the jail yard in May, 1867.

The hanging of Burnham was a great occasion. It is estimated that fully 10,000 people gathered on the west side of Powder House hill, where the execution took place. They came from near and far, in carts and in wagons, on horseback and on foot, old men and young men, beaus and lasses, mothers with babes in their arms and even invalids. A military guard escorted the prisoner from the jail to the scaffold, and the following sermon, preceded by singing and prayer, was preached by the Rev. David Sutherland,¹⁰ of Bath, to the immense concourse of people who listened to it with deep emotion.

and interment of the two victims. But before it was too late, the lawyer of the parties at whose suit the two men had been imprisoned, appeared upon the scene and cautioned the sheriff as to the steps he was about to take.

This lawyer . . . advised the sheriff to look carefully at his precept before entering upon a course from which he could not retreat. "And them safely keep until discharged by due process of law." "Is murder a due process of law?" the lawyer asked. Certainly not. It is an outrageously unlawful process; and in an action against you for an escape, do you imagine it could be set up in defense as a due process of law?" "What am I to do?" said the sheriff. "I have no advice to give," said the attorney. "Unless you can settle with the creditors, I see no way but to do nothing until you find out what to do." "Am I to leave those two bodies to rot and stink in jail? Why, we should be driven from the house in three days!" The lawyer suggested salt. "Barrel up and salt those two bodies!" said the sheriff, beginning to be *in furore*, "I'll be damned if I do. But before tomorrow at this hour I will learn what my duty is."

Accordingly, next morning before breakfast, Webster, having ridden all night, appeared at Judge Livermore's house in Holderness, where, of course, he gained the relief from his fears that he so much needed.

The notion that the body of the imprisoned debtor, whether dead or alive, belonged to the creditor, prevailed extensively in the northern counties of England less than a century ago. Josiah Burnham, His Trial and Execution, *ante*, p. 4.

¹⁰ The Rev. David Sutherland, whose sermon on the occasion was soon after published and is now exceedingly rare, was minister to the church in Bath, a man of remarkable character and ability. Born June 19, 1777, in Edinburgh, Scotland, he was educated in his native city, studied theology and began his ministerial career in Scotland on the first Sabbath in January, 1800. He came to

THE SERMON.

The occasion of our present meeting is inexpressibly awful. Several months ago a man, confined in the jail of this place, impelled by the impetuosity of his vile passions, laid violent hands on two of his fellow-prisoners, and put a period to their temporal existence. Since the perpetration of the horrid deed he has had an impartial trial, and has been condemned to die by the hands of the public executioner of justice. You have assembled to be spectators of the shocking scene and to attend to some devotional exercises. I am aware that on extraordinary occasions of this kind the public mind is raised very high in the expectation of very able and striking sermons; but let me beseech you to moderate your expectations and to listen with candid attention to some remarks, founded on the words of Paul, contained in Romans, VI., 23: "The wages of sin is death: but the gift of God is eternal life through Jesus Christ Our Lord.

In this chapter Paul draws a contrast between the service of sin and the service of God, and in our text he expresses

Barnet, Vt., in the Spring of 1803, preached in that vicinity for several months, and several Sabbaths in Bath, N. H., in 1804. In May, 1805, he received a call to settle in Bath, which he accepted, and became the first pastor of the church in that town. He resigned his pastorate in 1843, but continued preaching in different places almost every Sabbath until shortly before his death in 1855. His biographer says of him: "His sympathy with those in trouble, with the sick, the suffering, the bereaved and the disconsolate, was heartfelt and acute. During his ministry he attended, in his own and neighboring towns, not less than thirteen hundred funerals, at nearly every one of which he preached a sermon. His sermons were distinguished for clearness, perspicuity, a lucid order and natural arrangement. They were always Scriptural, practical, pungent. He had, too, great skill in adopting himself to the occasion and to special occasions. Were he called to deliver an address on the Fourth of July or on Masonry; to preach at the funeral of the aged or the young; of those who had died by drowning or suicide; of a pauper or the president of a college; or were he selected to preach before the General Association or the Legislature of the State, or to address 10,000 people assembled to witness the execution of a murderer, in all such cases he was equally appropriate and acquitted himself perhaps equally well." Josiah Burnham, *His Trial and Execution*, ante, p. 4.

the respective ends of these services. The verse contains two propositions, each of which claims our attention.

1st. The wages of sin is death. The Apostle John says that sin is the transgression of the law. God has been pleased to give a revelation of His will to men, in which he has clearly expressed what he would have them to do, speak and think, and in which he has prohibited the actions, words and thoughts that are disagreeable to Him.

The precepts of the revealed will of God constitute an invariable and eternal rule of rectitude to every creature. They are indeed many in number, but all of them, even the most minute, of lasting obligation. With respect to their actions men are commanded in this law "Whatsoever they do, to do all to the glory of God." In regard to the use of the tongue, its command is, "let no corrupt communication proceed out of your mouth, but that which is good to the use of edifying, that it may minister grace unto the hearers." It extends to the thoughts and intentions of men, for thus speaks the wise man, "keep thy heart with diligence, for out of it are the issues of life." Instead of repeating the scattered precepts of God's law, contained in the Scriptures, let it suffice at present to take the brief view of it given by Jesus Christ: "Thou shalt love thy Lord with all thy heart, and with all thy soul, and with all thy mind; this is the first and great commandment. And the second is like unto it, thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets."

The Commandments of God do not wax old; they do not become obsolete; nor do they admit the smallest deviation. The law neither knows mercy nor indulgence, for thus it is written: "Cursed is everyone that continueth not in all things which are written in the book of the law to do them;" and again, "Whosoever shall keep the whole law, and yet offend in one point, he is guilty of all."

Notwithstanding these solemn declarations, all men manifest a very strong inclination to disobey the commands of God. The carnal mind is declared to be in enmity against Him, it is not subject to His law, neither indeed can be. How

strikingly is this declaration verified in the conduct of mankind? The infant is no sooner capable of manifesting choice, than he discovers aversion to the holy law of Jehovah. The young, instead of remembering their Creator, forget Him, and are much more pleased in the enjoyment of carnal merriment than in the service of God. Men, instead of praying always, restrain prayer before God; instead of going up to the house of worship, forsake the assembling of themselves together; instead of attending to the things which belong to their everlasting peace, attend only to their worldly concerns. Some plunge into the grossest vices. The man of intemperance, discrediting what is told him concerning the fate of drunkards, still practices his abomination. The profane man, disregarding the divine injunction, swear not at all, gives the most unlimited scope to his tongue, that world of iniquity. The man of falsehood utters lies and practices deceit, although God says, "let every man speak truth to his neighbor." The unclean man, forgetful of God's prohibition of all kinds of unchastity, embraces every opportunity of gratifying his unhallowed prosperity. The dishonest man cheats, disregards and injures his neighbor, in defiance of God, whose command is, "thou shalt not steal." The sanguinary man plunges his dagger in the heart of his fellow creatures, although God hath said, "thou shalt not kill." Thus do multitudes of our fellow men act the part of rebels against the Most High. Yea, where is the man who sins not daily, and comes not short of the glory of God? The Scriptures conclude all men under sin, and declare that every mouth must be stopped, and that the whole world is guilty before God.

But mark the consequences of sin. It is in vain that sinners expect to escape with impunity. Jehovah, for wise reasons, permits transgressors to proceed in their own way, to walk in the ways of their heart, and in the sight of their eyes, but he lets them know that for all these things he will bring them to judgment. Yea, God has connected punishment with the commission of sin; which punishment is expressed in our text under the idea of wages. Sinners labor

hard in the service of sin, and assuredly they shall not go unrewarded. Sin is introduced in this passage of Scripture as a person paying wages to his hired servants. Here, then, let us consider the wages of sin. It is death. The first idea which occurs to the mind on the mentioning the word death, is the separation of soul and body. That the dissolution of human nature is the immediate effect of sin is very evident from the words of Paul, "by one man sin entered into the world and death by sin; and so death passed upon all men, for that all have sinned." With the exception of Enoch and Elijah, all who lived in the past ages have died; and the sentence is executing on the present generation every day. Some drop into eternity instantaneously; others have long warning by tedious confinement, pining sickness and excruciating agonies. The good order of society requires that some persons be put to death in a violent manner. Human governments, it must be confessed, have often far exceeded the power which God gives them over their subjects. But no reflection of this kind can be made on the present occasion, for, however painful to the feelings of the malefactor, we must say that his condemnation is just. The security of life requires that one capable of such an horrid deed, should cease to live among men. God's commission to Noah is very express, which not being a part of the Mosaic dispensation, was not disannulled with it: "Surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made He man." To witness the execution of this law of God must be very affecting to every feeling mind. To see a man in the full exercise of health and strength ascend a scaffold, and finish his days by the halter, is a humiliating scene and loudly calls on them that think they stand to take heed lest they fall. This is the scene which is about to be exhibited before you; to it I refer you for a demonstrative illustration of the truth of our text, the wages of sin is death.

Death here, however, implies more than mere deprivation

of animal life. It implies the punishment which awaits the ungodly in the eternal world. This is what arms temporal death with all its terrors. Many of the pains to which the human race are incident through life, are at least equal to the pains of dissolution in many instances, but it is the dread of futurity that fills the passage into eternity with all its supernumary horrors. The Scriptures say that "it is a fearful thing to fall into the hands of the living God. The Lord Jesus shall be revealed from heaven with his mighty angels in flaming fire; taking vengeance on them that know not God, and that obey not the Gospel of our Lord Jesus Christ, who shall be punished with everlasting destruction from the presence of the Lord, and from the glory of his power." When the judgment of the great day shall be brought to a close, the wicked "shall go into everlasting punishment; but the righteous into life eternal." That the finally impenitent might have no expectation of future deliverance from misery, our Lord assures them that in hell "their worm dieth not and their fire is not quenched"; and he also caused his servant John to intimate to them that they "shall drink of the wrath of the wine of God, which is poured out without mixture into the cup of His indignation; and they shall be tormented with fire and brimstone in the presence of the holy angels; and in the presence of the Lamb; and the smoke of their torment ascendeth up forever and ever; and they have no rest day and night." It is well known that these and similar portions of Scripture are explained by men who cannot endure the idea of future and eternal punishments, so as to make them mean nothing at all. Time and circumstances forbid a particular reply to these men. But let them beware lest by strained criticisms, and unwarrantable interpretations, they wrest the Scriptures to their own temporal and eternal destruction.

Aside from the direct assertions of Scripture, the immoral tendency of a contrary belief militates strongly against it. When a man works himself up to such a pitch of infidelity as to reject the doctrine of future punishment for sin, he is ready for the execution of every evil work. All difference

betwixt obedience and disobedience to the divine law vanishes. Being prone to forsake God, he chooses his own way; and being unacquainted with the influence of the Gospel of the Saviour, he has nothing to restrain him from acting out the latent corruption of his heart but the laws of the land; and as these take cognizance only of a few of the grosser actions of men, a person of this description may practice much iniquity without fearing God or regarding man. Accordingly you find him making very little account of the ordinary vices; yea, on slight provocations and disappointments, he is actually ready to butcher his fellow creatures and to lay violent hands on himself. Here I am warranted to speak with confidence. That poor man who sits there with trembling heart, waiting the fatal minute, declares that if he had believed there was a hell, he would not have murdered those two men. Other instances, of an equally daring nature, might be adduced in proof of the immoral tendency of denying that death eternal is the wages of sin; but let this suffice, and let it operate also as warning to men of this description. Verily, there is a God that judgeth in the earth, who will bring indignation and wrath, tribulation and anguish upon every soul of man that doeth evil; and who will by "no means hold as innocent the obstinate transgressor."

If God were to deal with men according to their deserts, all must descend to the region of woe; but blessed be His name, that whilst He testifies in His word what they deserve, He unfolds to their view an astonishing scheme of grace, by which they may be saved. This leads us to the consideration of the

2nd proposition contained in our text, namely, The Gift of God is eternal life through Jesus Christ Our Lord.

Eternal life in this clause of the verse stands opposed to death in the other. The way in which we are to conceive of the gift of God is by contrasting it with the wages of sin.

It does not, indeed, ward off the stroke of temporal death, it being appointed for every man once to die. Multitudes that no man can number have been made partakers of eternal life, since man forfeited the favor of God; yet all of them

who have been removed from the present state of existence, with the exception of two persons, have submitted to death. Even Abraham, the father of the faithful, "gave up the ghost and died—and was gathered to his people"; and Moses, the meekest and most exemplary of men, "died in the land of Moab according to the word of the Lord."

Viewing eternal life as the opposite of eternal death, we may conceive it to consist of that solid happiness which results from reconciliation to God, which commences in time, and continues in eternity. The man who is at enmity with God in his heart, is dead in trespasses and sins. He may, indeed, eat, drink and sleep like other men; he may rejoice in the works of his hand, and at last go down to the grave. But this does not deserve the name of life, for whilst he is alienated from the life of God through the ignorance that is in him, he abides in death. The man from whose heart enmity to God has been removed, is renewed in the spirit of his mind; old things are passed away and all things are become new. When a man is really "born again, not of corruptible seed but of incorruptible, by the word of God which liveth and abideth forever," he has the assurance that he shall not come into condemnation. He is redeemed from the curse of the law, and the waters that Jesus has given him, shall be in him a well of water springing up into everlasting life.

When the purposes of God's providence in this world are accomplished with respect to persons of this description, they are called home to the house not made with hands, eternal in the heavens. This was the consolation which Jesus gave to His disciples in the prospect of His departing from them: "In My Father's house are many mansions: If it were not so, I would have told you. I go to prepare a place for you. And if I go and prepare a place for you, I will come again and receive you to Myself; that where I am, there ye may be also." John, in vision, had a clear discovery of the enjoyment of the saints in the eternal world: "They are before the throne of God, and serve Him day and night in His temple: and He that sitteth on the throne shall dwell among them. They shall hunger no more, neither thirst any more;

neither shall the sun light on them, nor any heat. For the Lamb which is in the midst of the throne shall feed them, and shall lead them unto living waters of fountains of waters; and God shall wipe away all tears from their eyes."

Our text leads us carefully to notice the perpetuity of these enjoyments. The souls of men shall never cease to exist; and the souls of them that are reconciled to God through the sacrifice of Jesus, shall never cease to be happy. God Himself is their portion, and they shall enjoy Him forever. Accordingly in our Lord's description of the solemnities of the Judgment Day, He concludes in words big with terror to the ungodly, but full of consolation to his friends: "These shall go into everlasting punishment, but the righteous into life eternal."

That it might never enter into the minds of men that they could possibly merit such favor in the least degree, Paul represents it as the gift of God. When the Scripture speaks of men as sinners, it represents them as meriting death; but when it speaks of them as saints they are represented as debtors to sovereign grace and free mercy. "By grace are ye saved, through faith, and that not of yourselves, it is the gift of God. Not by works of righteousness which we have done, but according to His mercy He saved us, by the washing of regeneration and renewing of the Holy Ghost." Thus the pride of man is abased; his lofty looks and towering imaginations are brought low; and God alone is exalted in his salvation. It is very manifest that men are naturally unwilling to be indebted wholly to God for salvation; they are, on the contrary, disposed to aid in working out a righteousness of their own, on which they can place some dependence. He who retains this disposition, most assuredly has not submitted himself, to the righteousness of God. If a man be entirely willing under a deep sense of his extreme wretchedness and absolute dependence, to receive the holy salvation of the Gospel from God, as a free gift through the merits of His Son, it is an evidence of converting grace; but if he remain unwilling to be saved in this way, he shall be justly condemned, either for his criminal misunderstanding,

or his deliberate opposition to the revealed will of Jehovah. That carnally minded men are unwilling to be saved in God's way is most abundantly confirmed by the concurring testimony of Scripture, observation and experience; so that if salvation were not wholly of grace in its commencement, progress and consummation in the soul, not one of mankind would ever be saved. Notwithstanding, then, the unhallowed murmurs of proud men, the bold conclusions of carnal reasonings, and the high expectations of Pharisaical devotion, it is surely safest to acquiesce fully in the plain express testimony of the God of truth: "I will have mercy on whom I will have mercy and I will have compassion on whom I will have compassion."

We are next led to consider the medium through which the gift of eternal life is communicated to men; it is through Jesus Christ our Lord. Our heavenly Father does not bestow this gift in the character of an absolute God. He has a regard to His justice as well as His mercy. That these might unite together in the salvation of man, God sent forth His Son, made of a woman, made under the law, to redeem them that were under the law, that we might receive the adoption of sons. Jesus, who is Jehovah's equal, that he might make atonement for sin, in the nature wherein sin was committed, became incarnate. Whilst in our world, our sins were laid on Him; although the constant object of His Father's love, yet, viewed as the substitute of guilty man, it pleased the Father to bruise Him. He endured the wrath and curse of God for sinful men. By His obedience unto death, He satisfied all the demands of divine justice, and made the most ample atonement for the sins of all who should ever believe in His name. In reference to the great work of redemption which He had undertaken, He said on the cross, "It is finished!" And His resurrection from the dead verified the declaration of our adorable Redeemer that the justice and mercy of Jehovah are displayed to the world in all their beautiful perfection. "Being justified freely by His grace," saith the Apostle, "through the redemption that is in Christ Jesus; whom God sent forth to be a propitiation

through faith in His blood, to declare His righteousness for the remission of sins that are past, through the forbearance of God; to declare at this time His righteousness; that He might be just and the justifier of Him who believeth in Jesus." Thus we see that the merits of the blood of Jesus constitute the only ground of hope for poor guilty sinners. Accordingly, when the hope of salvation is set before men in the Scriptures, their attention is constantly drawn from everything else, and fixed on this precious Saviour. Take a specimen from Paul, of the manner in which the Apostle set before men the method of salvation. "Be it known unto you, men and brethren, that through this man is preached to you the forgiveness of sins: and by him all that believe are justified from all things from which ye could not be justified by the law of Moses." The Gospel of Jesus brings salvation to the vilest and most wretched of mankind, for the command is to preach it to every creature. Men of speculative minds have sometimes exercised their ingenuity in fixing the degree of criminality that precludes the possibility of salvation, but it is to be observed that the Scriptures do not furnish us with a criterion for ascertaining the comparative merits of great and small sins. They indeed speak of one unpardonable sin, but whether that be different from a deliberate perseverance in unbelief, since the days of Jesus Christ, is, at best, doubtful. They conclude all under sin, and every sinner they represent as being in danger of damnation, so that without paying the least regard to the claims of the moralist, they consider all men as standing precisely on the same level in the sight of God. Viewed in this light, therefore, the Gospel of the Saviour opens the only, but an effectual door of hope to the guilty, by declaring that Christ is able to save "to the uttermost all that come unto God by Him, seeing He ever liveth to make intercession for them. To stop the mouths of that class of infidel objectors who consider their sins as too great for forgiveness, an inspired writer was directed to write thus: "The blood of Jesus Christ His Son cleaneth us from all sin." In virtue of the sacrifice of Jesus, God is in Christ reconciling the world unto Himself, not

imputing their trespasses unto them. Thus all obstacles are removed; and to as many as receive Jesus gives He power to become the sons of God, even to them that believe on His name; who are born not of blood, nor of the will of the flesh, nor of the will of man, but of God.

These remarks, suggested by the words of our text, are deeply interesting to us all; but more especially they demand the attention of the malefactor, who is now about to suffer for his crimes. I shall take the liberty, therefore, of addressing him on this awfully interesting occasion:

Unhappy fellow creature, you are now an old man.¹ In the course of your long life you have experienced many painful seasons of adversity, but this is the most trying of them all! You are now exhibited as a spectacle of horror to this immense concourse of your fellowmen. Already are you pinioned, the fatal cord is wreathed about your neck, the terrible gibbet is erected over your head and your grave is open beneath your feet! A few minutes more and you shall be in eternity! Whilst this company is dispersing and previously to reaching their respective homes, you shall have received an irreversible sentence from the mouth of the Judge of the whole earth! Addressing you, therefore, for the last time, in the immediate view of eternity, you will bear with me, whilst with plainness of speech I would endeavor to deal faithfully with your soul. In doing so, I beseech you to observe that what is purposed to be said is not designed to gratify the malicious feelings of any person present, nor to irritate your temper in your dying moments; but to reach, if possible, an effectual conviction of guilt to your mind, before you pass into the eternal world; for without a deep impression of your sinfulness, you will, no doubt, disregard the glad tidings of salvation.

The crime for which you suffer is of the deepest dye. Murder is so shocking that even a man of very corrupt morals recoils at it with horror. Reuben, Jacob's oldest son, though guilty of incest, protested against the death of Joseph. What degree of provocation you received is unknown to us; but

¹ He was 63 years of age the day on which he was executed.

whatever it was, surely it did not warrant the atrocity of your revenge. Indeed, by taking any revenge, you infringed the prerogative of God. "Vengeance is mine; I will repay, saith the Lord." Besides the crime for which you suffer, it is generally believed that you have indulged yourself much in some of the most scandalous vices, such as lewdness, profanity and passion. Indeed, you are a living witness of the truth of the description which Jesus gives of the human heart: "For from within, from the hearts of men proceed evil thoughts, adulteries, fornications, murders—covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness: all these things come from within and defile the man."

During several months after the commission of the deed, you attempted to justify your conduct in very profane and blasphemous language, by which you added greatly to the enormity of your guilt. At last you professed a change of principles and feelings; and for some time past you have been exercised with a considerable degree of concern of mind. Still, however, pious people who have conversed with you have observed a lamentable want of humility, tenderness and contrition; and indeed, to this hour, they have no evidence of that radical change of heart, without which you cannot enter into the kingdom of heaven.

But is it so that you really feel yourself to be a guilty, condemned criminal before God and man? Do you feel deeply pressed in spirit under the hateful load of your iniquities? Be entreated to look to Him who is still able to save. "Come unto me," said Jesus, "all ye that labor and are heavy laden and I will give you rest." You have already felt that sin has nothing to give you except a bitter recompence; but by casting yourself on the mercy of God, through the merits of Jesus, loathing yourself, abhorring your sins, and earnestly desiring the enjoyments of heaven, you may yet be saved. It is in this way that God bestowed the gift of eternal life on men, to whom the word of this salvation is sent. Consider, for your encouragement, the character of that God with whom you have to do. He is the Lord, "The

Lord God, merciful and gracious, long suffering, and abundant in goodness and truth. Keeping mercy for thousands, forgiving iniquity and transgression and sin." He is rich in mercy. Consider also the amiable character of Jesus. To save men He submitted to the accursed death of the cross. His readiness to save malefactors, such as you are, is very evident from his granting pardon to the dying thief. It is true that you cannot behold Him now with your bodily eyes as that thief did. But verily, His eyes are set on you, and He is intimately acquainted with every wish of your heart. What abundant encouragement does this afford to believe on Him as your Saviour and to call on His name. Whosoever shall call on the name of the Lord shall be saved. Behold the Lamb of God which taketh away the sin of the world. This is a faithful saying and well worthy of all acceptance, that Christ Jesus came into the world to save sinners of whom I am chief. To Him gave all the prophets witness, that, through His name, whosoever believeth in Him shall receive remission of sin. These are words told you in the Scriptures whereby you may be saved. May our God enable you to believe, understand and love them. May His spirit sanctify your soul, and His angels convey your departing spirit into the bosom of Abraham. May an entrance be administered unto you abundantly into the everlasting kingdom of our Lord and Saviour Jesus Christ. Finally, Farewell!

From the unhappy criminal I turn to this numerous audience to remind you, my hearers, that the wages of sin is death. You are all sinners, and God will bring you to the house appointed for all living. Possibly there are some among you, who, if your crimes were as well known as those of Josiah Burnham, should, like him, be brought to an untimely end. Others of you are now living in the commission of sins, not cognizable indeed by human laws, but for which God will call you to account. You esteem it a matter of alarming consequence to be arraigned at a human tribunal, tried, convicted and hanged; and you think right, for so it is. But **alas**, many of you think nothing of the probability of your

being condemned at the bar of the Eternal Judge. Know you not that God, who is now the witness of all your actions, will bring to light the hidden things of darkness, and will make manifest the counsel of the hearts. In a few minutes you will shudder to see a fellow creature launched into eternity! But oh, remember that it shall be much more intolerable to fall into the hands of the living God who is angry at the wicked every day. All the temporal judgments that overtake ungodly men, are only as a single drop in comparison of that overflowing cup, the very dregs of which they shall be forced to wring out in the eternal world. Consider this, therefore, ye who forget God lest he tear you to pieces and there be none to deliver.

Whilst you have nothing but ruin and misery before you in consequence of sin, the Gospel of the Saviour opens to your view a very inviting prospect. It shows the way that leads to glory and immortality. It displays the open gates of heaven to sinners of the human race. It exhibits the incarnate God, suffering, bleeding and dying for guilty men. He says, "Look unto me all ye ends of the earth and be ye saved." Remember that the gift of God is eternal life through Jesus Christ our Lord. Are you entirely willing to receive this free gift, which implies the destruction of all your carnal attachments? Bless God for having made you a willing people in the day of his power. But are you unwilling to submit yourselves entirely to God? Are you hesitating about placing the whole of your dependence on a crucified Saviour, and placing some small confidence on your performances? Then, remember you will have to answer to God for refusing His offers, disregarding His calls, and disobeying His commandments.

Those of you who are of a fiery, passionate disposition are loudly called on by the solemn transactions of this day to consider your ways. Some men can no more endure the slightest degree of provocation than gunpowder can endure fire. When their inclinations are thwarted they are fretful, peevish and quarrelsome. The least disrespectful expression or even the moving of a finger in derision; the frowardness

of an infant, or an irrational animal, is enough to throw them into a paroxysm of rage. Let persons of this description beware lest their ungovernable passions prove their ruin. An angry man cares not what he does. His madness sets him above all apprehensions of responsibility; and he is as ready to commit murder as anything else. Would you avoid, therefore, an untimely end you must subdue your unruly tempers. Consider, moreover, that God disapproves all angry passions. His command is, "Cease from anger and forsake wrath; fret not thyself anywise to do evil." Remember, the meek and lowly Saviour, who, when He was reviled, reviled not again, and who, when He suffered, threatened not, and aim to have the same mind in you that was in Him.

The transactions of this day are calculated to produce deep humiliation of mind. That the civil authority should be under the disagreeable necessity of inflicting capital punishment in any case, but more especially in the present almost unparalleled instance, is a matter of deep humiliation before God. Here we have a striking display of the total depravity of that nature we possess, and of what we would all be, were it not for the restraining grace of God. Whilst you are the spectators of this scene, and when you depart from this place, be entreated to preserve the deepest solemnity of spirit. With the agonizing struggles of a man strangled to death, fresh in your view, surely none of you can be so brutish as to regale yourselves with the intoxicating cup, join vain company, or participate in the carnal merriment of a ball-room. Let this execution impress the words of the Redeemer on each heart, "except ye repent, ye shall all likewise perish. Therefore be ye also ready, for in such an hour as ye think not the Son of Man cometh."

Let me conclude by calling on them that have tasted that the Lord is gracious, to exercise gratitude to Him who hath bestowed on them the gift of eternal life. Brethren, you are plucked as brands from the burning, and have the prospect of being saved from the misery of perdition. See that you retain the liveliest sense of your exalted privilege, and that you constantly show forth the praises of Him who hath quick-

ened you from your death of trespasses and sins. On this occasion you will doubtless feel deeply for the poor malefactor. He is your brother. All that you can do for him now is to pray to your Heavenly Father in his behalf. The effectual, fervent prayer of the righteous man availeth much. Cease not, then, to accompany him with your prayers, that God would grant him the gift of eternal life through Jesus Christ our Lord.

The sermon ended, Burnham was given an opportunity to address the multitude, which he did in a faltering and broken speech, the substance, however, of which was a confession of his crime and the justice of his punishment. He said among other things that he had been a believer in the doctrine of universal salvation, and but for this he would not have committed the crime for which he was about to suffer, and he admonished his hearers to beware of this doctrine. He was entirely unmoved during all the ordeal at the gallows, evincing not the slightest feeling at the impressive words of the preacher, which melted the vast audience into tears and sobbing.

THE TRIAL OF THE CONSPIRATORS TO ASSASSINATE PRESIDENT LINCOLN WASHINGTON, D. C., 1865

THE NARRATIVE.

There was more than one attempt upon the life of Abraham Lincoln^a during his presidential term. Before he reached Washington to be inaugurated, after his first election, his friends learned of a plot to assassinate him in Baltimore, which was frustrated by his changing his plans and going through that city in the night-time. And when the cause of the Confederacy began to decline, there were conspiracies made in Canada to abduct and murder the President and some of his cabinet; to burn steamboats, warehouses and hospitals in the western states; to introduce pestilence into the cities of the north by clothing, infected with yellow fever and smallpox, brought from the West Indies; to blow up the southern prisons in which Union soldiers were confined; to burn New York and other great cities; to make raids across the Canadian border on towns like St. Albans, Vt., and to poison the water of the Croton reservoir of New York City.

The story of the most foul and most senseless assassination of a nation's head that history records has been often told. In the following pages it will be found exactly as it was testified to under oath after the death of the murderer on the trial of his fellow-conspirators.

^a LINCOLN, ABRAHAM. (1809-1865.) Born Hardin County, Ky. Self educated; he worked on his father's farm in Kentucky and then at Decatur, Ill. Captain in Black Hawk War, 1832, and afterwards storekeeper, surveyor and postmaster. Studied law and entered politics. Member State Legislature 1834. Admitted to Illinois Bar 1836 and practiced law in Springfield until his election to the Presidency. Presidential Elector, 1840, 1844. Member of Congress, 1846-1849. President of the United States, 1861-1865.

The Confederate armies had surrendered, Richmond had been captured and the great rebellion was at an end. Washington was celebrating the triumph with illuminations, and on the evening of Friday, April 14, 1865, President Lincoln was to attend a performance of the comedy "Our American Cousin," at Ford's theater, and it was announced that General Grant,^b who was in the city, would accompany him. But the General was unexpectedly called away, and so President and Mrs. Lincoln took with them as their guests Major Henry R. Rathbone and Miss Clara Harris. The Presidential party arrived at the theater at 8:30, and being conducted to the President's box and Mr. Lincoln having returned the salutations of the crowded assembly, the performance began, the President sitting in a large arm-chair with his back to the door through which the box was entered.

At about 10 o'clock, and while the third act of the play was in progress, a spectator saw a man pass along the aisle and push open the door of the President's box; in another moment he saw the flash of a pistol, heard its report, and the man rushed to the front with a knife in his hand and jumped from the box to the stage below. As he leaped one foot caught in a flag—one of the decorations of the box—and he fell to the floor for an instant, fracturing his leg. Then, recovering himself, he rose and exclaimed, "*Sic semper tyrannus!*"—ran across the stage and disappeared behind the scenes.¹

Another spectator who was sitting in the front seat of the orchestra, as the assassin rose, jumped on the stage crying

^b GRANT, ULYSSES SIMPSON. (1822-1885.) Born Point Pleasant, Ohio; graduated at West Point and served in the Mexican War; resigned from the army and engaged in farming near St. Louis and with his father in the leather business in Galena, Ill. Volunteer in the Civil War and went from Captain to Brigadier in a short time; then Major, then Lieutenant General, and finally General-in-Chief of the Armies of the United States. The surrender to him of General Lee and his army brought the war to an end. President of the United States, 1868-1876. Died at Mt. McGregor, N. Y. See *post*, p. 55.

¹ James P. Ferguson, *post*, p. 80.

"Stop him," and pursued him through the scenes into a room at the back. The assassin slammed after him a door which opened upon a lane and when the spectator was able to open it he perceived in the moonlight a man mounting a horse in the alley; he tried to stop the horse but, urged by its rider, it soon outdistanced him, disappearing down the street on a gallop.²

When the shot was fired Major Rathbone,³ who was intently watching the actors on the stage, turned around and saw through the smoke a man between the door and the President. He sprang toward him and seized him, but the intruder wrested himself from his grasp and made a violent thrust at his breast with a large knife. He parried the blow by striking it up and received a wound several inches deep in his left arm. The man then rushed to the front of the box and Major Rathbone tried to seize him again, but only caught his clothes as he was leaping over the railing of the box. He then turned to the President, who sat in his arm-chair, and whose head was slightly bent forward and eyes closed. He rushed to the door to call medical aid, but found the outer door barred by a piece of plank, one end of which was secured in the wall and the other resting against the

² Joseph B. Stewart, *post*, p. 85.

³ *Post*, p. 83.

"Major Rathbone was the son of Mrs. Rathbone of Albany, N. Y., by her first husband, and Clara Harris was the daughter of Ira Harris, United States Senator from New York, by his first wife. The surviving parents married, making these two stepbrother and sister. The awful tragedy which he and Miss Harris witnessed perhaps brought them into a singular sympathy, and in a year or two they were married. They had fortune and high character, children were born to them, and they passed a few years in Washington, respected by all; but those who were in their especial intimacy knew that there was a cloud always hanging over the spirit of Rathbone. The scene of that fearful night left an impression on his nerves from which they never recovered. Finally the family went abroad, and shortly afterward the world was shocked to learn that Major Rathbone had shot and killed the wife whom he had tenderly loved." Oldroyd, "The Assassination of President Lincoln," p. 95.

door. Persons upon the outside were beating against the door trying to enter. He removed the bar and several surgeons at once came in. The President was carried to a house opposite, and it was found that he had been shot in the back part of the left side of the head. The case was pronounced hopeless by the surgeons, and at half-past seven the next morning the President passed away.

As the assassin leaped on the stage several people in the audience recognized him as John Wilkes Booth, the actor,⁴

⁴ John Wilkes Booth was born on The Farm, near Baltimore, in 1838. His father, Junius Brutus Booth, was born in London, England, in 1796, and became a famous actor, meeting with long and triumphant successes upon the English and American stage. He died in 1852, leaving four sons, Junius Brutus, Edwin, John Wilkes, and Joseph. The three oldest were actors, and the youngest, Joseph, tried the stage, but failed. There were also five daughters. John Wilkes displayed much affection for his mother and sisters, but they had no influence over him, as he was wayward, headstrong, and disobedient. He was not fond of the pent-up life of the schoolhouse, but, instead, loved the enthusiasm of hunting, fishing, and outdoor sports; especially was he fond of the stable, where he learned to be a graceful horseman. While quite young he became a lover of the stage, but the beginning of his career upon it was not assuring of success. He lacked enterprise, and did not study his parts, so that when he appeared upon the stage he blundered continually, and was frequently hissed while playing in Philadelphia. At the age of twenty-two he had the reputation at first of having no promise, but after many trials showed some talent and merited some applause. He made his first appearance in 1855 in "Richard III." at the St. Charles theater in Baltimore, and in the fall of 1857 appeared under the name of Wilkes at the Arch Street theater in Philadelphia, where he played stock parts during the entire season. The name of Wilkes was given him by his father in honor of an old Baltimore friend, Jim Wilkes. Booth next became a member of the Richmond (Va.) theater, improved, and became a favorite with the Southerners. He was very fond of the Southern people, and at the breaking out of the rebellion sympathized with them and espoused their cause.

In 1859 he was in a new role. At Richmond he enlisted in a company of militia, and with his company stood guard around the scaffold, at Charlestown, W. Va., on which the abolitionist, John Brown, was hanged. (See 6 Am. St. Tr., XXIII.) During the season of 1860 and 1861 we find him engaged still farther South, playing chiefly at Montgomery, and Columbus, Ga. While he favored the Southern cause, he did not fancy conscription into the Southern

as did some of the theater employes, as he rushed through the wings to the rear door and made his escape.⁵

At about eleven o'clock that night the sentinel at the bridge across the Potomac stopped a man on horseback, who on telling him that his name was Booth and that he was going to his house in the country, was allowed to pass. Less than ten minutes after, another horseman appeared who said his name was Smith, and also was permitted to pass.⁶ This was Herold, who soon joined Booth, and the next morning they reached the residence of Dr. Samuel Mudd, where they remained twenty-four hours, while Booth's broken leg was set. They resumed their flight, hiding in the woods and

army, so escaped North. Unlike his brother Edwin and many others of the profession, he was unwilling to start at the foot of the ladder and work his way up by hard work, but wanted to make fame at one bound. However, he finally made a success of the profession, and from eight dollars a week he got half the gross proceeds of many performances. His favorite acting was tragedy. He was, by a long period of training, especially fitted to become a graceful and dramatic murderer. His models were great criminals, and he studied their lives, their schemes, their attitude in the commission of crime, until in his acting upon the mimic stage he had become accomplished. Familiarity with all these things made his task comparatively easy, and inspired him with the spirit of fanaticism, inciting him to kill the President. It has been said that he excelled in the part of Richard III. . . .

Although speculations and theories as to the motives of Booth in assassinating President Lincoln will never come to an end or settlement, it is the author's opinion that it was solely to immortalize himself. Money could not have hired him to do such an act, but the picture of a famous name appeared before him, and he could not resist the temptation to grasp it. The original scheme of kidnapping, whether of his own origin or that of others, was to abduct Lincoln, take him South, and hold him until the supposed ills of the Confederacy had been righted. The various plots having failed, and now that the cause of secession was lost, he became desperate. The opportunity for fame for himself and revenge for the South was ebbing away, and when the last opportunity presented itself, he grasped it with the eagerness of the "ambitious youth who fired the Ephesian dome." Oldroyd, "The Assassination of President Lincoln," p. 88.

⁵ William Withers, Jr., *post*, p. 84; Joe Simms, *post*, p. 86.

⁶ Silas T. Cobb, *post*, p. 90.

swamps by day, until on the 24th they reached the farmhouse of Richard H. Garrett, near Port Royal, Va.

But during all these days hundreds of cavalrymen had been scouring the country for the fugitives. They traced them across the bridge, to the home of Dr. Mudd, and then to the Garrett farm. At two o'clock on the morning of April 26th, a troop of horsemen surrounded the Garrett farmhouse, and when the owner, dressed in his night clothes, made his appearance, Lieut. Baker seized him by the throat with one hand and with the other held a pistol at his head and asked him where the two men were who had come to his house. "They are gone," he said; "we haven't got them in the house; they have gone to the woods." Then the Lieutenant called for a rope and said they would put him on the top of one of the locust trees, when his son appeared and said, "Don't hurt the old man, he is scared. I will tell you; the men are in the barn."⁷ The soldiers went to the barn, found the door locked, but heard a sound of persons inside. Colonel Conger called out that he was going to send young Garrett inside to get their arms, and to come out themselves or the barn would be fired. The boy went in, but soon returned telling the officer that Booth had replied to him: "Damn you, get out of here, you have betrayed me." Baker repeated the demands for a surrender. "You must surrender inside there! Give up your arms and appear; there is no chance for escape. We give you five minutes to make up your mind." "Who are you, and what do you want with us?" came out in a bold voice. Baker replied: "We want you to deliver up your arms and become our prisoners." "But who are you?" "That makes no difference; we know who you are and we want you. You cannot escape." After a pause Booth said: "Captain, this is a hard case, I swear; perhaps I am being taken by my own friends. I am but a cripple, a one-legged man. Withdraw your forces one hundred yards from the door and I will go out. Give me a chance for my life, Captain, for I will never

⁷ Everton J. Conger, *post*, p. 98.

be taken alive." "We did not come here to fight but to capture you, and if you do not come out I will fire the barn." Booth then called out: "Well, my brave boys, you can prepare a stretcher for me." A conversation between Booth and Herold was then heard, when Booth said: "You're a ——— coward and mean to leave me in my distress; but go, go! I don't want you to stay—I won't have you stay." Another voice: "Let me out; open the door; I want to surrender." "Hand out your arms then." "I have no arms." "You are the man who carried the carbine yesterday; hand it out!" In a whining voice he replied: "I haven't got any." Booth cried out: "On the word and honor of a gentleman he has no arms. They are mine and I have got them." The door was opened just far enough for his two arms to protrude when handcuffs were placed upon them and Herold was quickly brought out.⁸

Colonel Conger now made a rope of straw, set it on fire, thrust it inside on top of a pile of hay and a sheet of flame and smoke soon leaped from the rear of the building. The barn was brilliantly lighted and in the middle of the building Booth was seen standing erect, one arm over his crutch, the other holding a carbine. As the blaze came toward him he stepped nearer the door. He peered at the cracks of the building as if to get a shot at those outside, but the opportunity did not come to him for an unexpected report came from the pistol in the hand of Sergeant Corbett⁹ and Booth sank down limp upon the barn floor. The door was opened and the soldiers rushed in, dragged him out and stretched him on the grass, where, after lying in agony for two hours, he died just at sunset.

⁸ Capt. Edward Doherty, *post*, p. 104.

⁹ Boston Corbett, *post*, p. 102.

"Sergeant Boston Corbett was a hat finisher by occupation. The regiment to which he belonged (16th New York Cavalry) was stationed at Vienna, Va., about twelve miles from Washington. . . . After the war Corbett led a wandering life over the country, canvassing, peddling, and doing odd jobs. He was appointed door-keeper in the House of Representatives of the State of Kansas. In

That Booth was one of a band of conspirators to destroy not only the President but other high officers of the government, was shown by the simultaneous attack the same night upon Hon. William H. Seward, the Secretary of State.

On May 1, President Johnson appointed a military commission to try the persons implicated in the assassination plot, and on the tenth of that month that body, composed of nine officers of high rank, met at Washington and proceeded to try as accomplices in the murder of President Lincoln and as members of a conspiracy to assassinate Mr. Seward and other officers of the government, at Washington, seven men and one woman, viz.: David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward S. Spangler, Samuel Arnold, Samuel A. Mudd, and Mrs. Mary E. Surratt.

The trials lasted nearly two months, and all the accused persons were found guilty. Four were hanged, and four sentenced to imprisonment for long terms.

[There are several contemporary reports of the trial, but the most accurate and complete one is that of Benn Pitman, who was the official recorder of the military commission. It includes the entire testimony adduced, all the documents introduced in evidence, and the discussion of points of law raised by counsel, the addresses of the lawyers on both sides, and the findings and sentences.¹⁰ Unlike most reports of criminal trials, it is arranged in narrative form as to each prisoner in succession, thus presenting a clear view, to the reader, of the charge and the evidence and the result in the case of each of the accused. The prisoners' request for separate trials was refused by the commission, and they were

the session of 1887, when in a crazy fit, he drew a couple of revolvers and prorogued the House of Representatives—that is, they scampered and climbed over each other to get out. They managed to quiet him down and got control of him without any one being hurt. He was examined mentally, placed in an asylum and a guardian appointed . . . he has for the four years past been a salesman for a Topeka patent medicine concern. He is now (1901) sixty-two years old." Oldroyd, "Assassination of Abraham Lincoln," p. 98.

¹⁰ See page 33, *Bibliography*.

all tried together; but to follow the evidence in the order it came before the court is most confusing, and Mr. Pitman's method, which was approved by the commission, viz.: to report the trial in different parts, giving, first, the general testimony as to the conspiracy; second, the trial of each of the accused as though they had been granted separate trials, and third, the findings, sentences and executions, has been followed by the editor of this volume.]

THE TRIAL.¹¹

*Before a Military Commission Convened at Washington, D. C.,
May, 1865.*

Major-General DAVID HUNTER,¹² *President.*

Major-General LEWIS WALLACE.¹³

Brevet Major-General AUGUST V. KAUTZ.¹⁴

Brigadier-General ALBION P. HOWE.¹⁵

Brigadier-General ROBERT S. FOSTER.¹⁶

Brigadier-General JAMES A. EKin.¹⁷

Brigadier-General T. M. HARRIS.¹⁸

Colonel C. H. TOMPKINS.¹⁹

Lieutenant-Colonel DAVID R. CLENDENIN.²⁰

On May 1st Andrew Johnson,²¹ President of the United States, ordered that a Military Commission should be ap-

¹¹ *Bibliography.* *"The Assassination of President Lincoln and the Trial of the Conspirators, David E. Herold, Mary E. Surratt, Lewis Payne, George A. Atzerodt, Edward Spangler, Samuel A. Mudd, Samuel Arnold, Michael O'Laughlin. Compiled and arranged by Benn Pitman, Recorder to the Commission. Publishers: Moore, Wilstach & Baldwin, 25 West Fourth Street, Cincinnati. New York, 60 Walker Street. 1865."

*"Trial of the Assassins and Conspirators for the Murder of Abraham Lincoln, and the Attempted Assassination of Vice-President Johnson and the Whole Cabinet. The most intensely interesting trial on record. Containing the evidence in full, with arguments of Counsel on both sides, and the verdict of the Military Commission. Correct likenesses and graphic history of all the assassins, conspirators, and other persons connected with their arrest and trial. Philadelphia: Barelay & Co., 602 Arch Street."

*"The Assassination of Abraham Lincoln, Flight, Pursuit, Capture, and Punishment of the Conspirators, by Osborn H. Oldroyd,

pointed by the War Department for the trial of "the persons implicated in the murder of the late President Abraham Lincoln, the attempted assassination of William H. Seward and the members of the alleged conspiracy to assassinate other officers of the Federal Government at Washington, their aiders and abettors." In pursuance thereof the Commission was appointed on May 6th for the trial of "David E. Herold,

with an introduction by T. M. Harris, late Brigadier-General U. S. V., and Major-General by Brevet, a member of the Commission. Washington, D. C.: O. H. Oldroyd, MDCCCCI."

¹² HUNTER, DAVID. (1802-1886.) Born and died Washington, D. C. Graduated West Point, 1823. Resigned from army to go into business in Chicago, 1836. Re-entered army, 1842, and was in the Mexican War. In the Civil War he was successively Colonel of Cavalry, Brigadier and Major General. In command of the Department of the West, 1864. Retired from army, 1886.

¹³ WALLACE, LEWIS. (1827-1905.) Born Brookville, Ind. Was law student but volunteered for Mexican War. Began practice of law in Indiana, 1848, and became a State Senator. At beginning of Civil War was made Colonel of Volunteers and Adjutant General of Indiana. Became Brigadier and Major General and retired from the army in 1865 to practice law. Governor of Utah, 1871. Minister to Turkey, 1881-1885. Author of several literary works, notably "Ben Hur." Died in Crawfordsville, Ind.

¹⁴ KAUTZ, AUGUSTUS VALENTINE. (1828-1895.) Born in Germany. Served in Civil War and became a Colonel and Brevet Major General. Was the writer of some military text books.

¹⁵ HOWE, ALBION PARIS. (1818-1897.) Born Standish, Maine. Graduated West Point, 1841, and taught mathematics there, 1843-1846. Served in Mexican War and was made Captain. Chief of Artillery with General McClellan, 1861. Brigadier General, 1862; Major General, 1865. Retired from army, 1882.

¹⁶ FOSTER, ROBERT SANDFORD. (1834-1903.) Born Vernon, Ind. Brigadier General U. S. Volunteers, 1863. Major General, 1865. Treasurer City of Indianapolis, 1867-1872. United States Marshal, Indiana, 1881-1885.

¹⁷ EKin, JAMES ADAMS. (1819-1891.) Born Pittsburg, Pa. Served apprenticeship as shipbuilder and engaged in building steamboats at Pittsburg until the Civil War. Entered 12th Pennsylvania Infantry as First Lieutenant and Regimental Quartermaster. At expiration of three months made Captain and Assistant Quartermaster in the Volunteer army. Admitted to Regular army with similar rank, 1863, and assigned to duty as Quartermaster of Cavalry, Washington, 1863. Colonel and Chief Quartermaster of the Cavalry Corps of the Army of the Potomac; then in charge of First Division of Quartermaster General's Office in Washington. Sub-

George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt, Samuel A. Mudd, and such other prisoners as may be brought before it, implicated in the murder of the late President Abraham Lincoln, and the attempted assassination of the Honorable William H. Seward, Secretary of State, and in an alleged conspiracy to assassinate other officers of the Federal Government at Washington City, and their aiders and abettors."

May 10.

The COMMISSION met today.

Joseph Holt,²² Brigadier General and Judge Advocate General; *John A. Bingham*²³ and Colonel *H. L. Burnett*,²⁴ Assistant Judge Advocates, for the Government.

sequently Chief Quartermaster of the 5th Military District and Dept. of Texas; then of the Dept. of the South. Assistant Quartermaster General of the Army, 1882. Brevet Brigadier General in the Regular Army. Retired, 1883. Died in Louisville, Ky.

¹⁸ HARRIS, THOMAS MEALY. (1817-1906.) Born Wood Co., Va. Became Brigadier General in the Civil War and at its close devoted himself to agriculture. Member West Virginia Legislature, 1867. Adjutant General, 1869. United States Pension Agent, 1871-1877.

¹⁹ TOMPKINS, CHARLES HENRY. (1830-1915.) Born Ft. Monroe, Va. Served with distinction as a cavalry officer in the Civil War and was brevetted Brigadier General. Retired from Army, 1894.

²⁰ CLENDENIN, DAVID RAMSEY. (1830-1895.) Born Lancaster, Co., Pa. Entered Union army as Major Illinois Cavalry. Became Brigadier General and retired in 1891. Died in Oneida, Ill.

²¹ JOHNSON, ANDREW. (1808-1875.) Born Raleigh, N. C. Tailor's apprentice and taught to read and write by his wife. Member Tennessee Legislature, 1843-1854. Member of Congress, 1853-1857. Governor of Tennessee and United States Senator, 1857. Military Governor of Tennessee, 1862. Elected Vice-President of the United States, 1864, succeeding to the Presidency in April, 1865. Impeached by Congress, but acquitted. Elected to the Senate again from Tennessee in 1875.

²² HOLT, JOSEPH. (1804-1894.) Born Breckinridge Co., Ky. Educated, St. Joseph and Centre Col., Ky. Began practice of law, Elizabethtown, Ky., 1828, removed to Louisville, 1842. Commissioner of Patents, 1857. Postmaster General, 1859. Secretary of War, 1860. Judge Advocate General, 1862. Major General, 1865, and retired from army in 1875.

²³ BINGHAM, JOHN ARENDE. (1815-1885.) Born Mercer, Pa. Passed two years in a printing office and then entered Franklin

The *Judge Advocate General* read the order of the War Department appointing the Commission. By the order of May 6th Brigadier-General Cyrus B. Comstock²⁵ and Colonel Horace Porter²⁶ were named members but by an order of May 9th Brigadier-General James A. Ekin and Colonel C. H. Tompkins, U. S. Army, were detailed in their places.

David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt and Samuel A. Mudd were brought into court, and having heard read the foregoing orders, were asked if they had any objection to any member named therein, to which all severally replied they had none.

The charges and specifications were read as follows:

Charge.—For maliciously, unlawfully, and traitorously, and in aid of the existing armed rebellion against the United States of America, on or before the 6th day of March, A. D. 1865, and on divers other days between that day and the 15th day of April, A. D. 1865, combining, confederating, and conspiring together with one John H. Surratt, John Wilkes Booth, Jefferson Davis, George N. Sanders, Beverly Tucker, Jacob Thompson, William C. Clearly, Clement C. Clay, George Harper, George Young, and others un-

College, Ohio. Admitted to bar, 1840. District Attorney, 1846-1849. Member of Congress, 1854-1863. Judge Advocate and Solicitor Court of Claims. Again member of Congress, 1865-1873. Minister to Japan, 1873-1885.

²⁴ BURNETT, HENRY LAWRENCE. Born 1838, Youngstown, O. Educated Chester Academy and Ohio State Law School; admitted to bar, 1859; entered Army as Captain and became a Brigadier General; resigned, 1865, and practiced law in Cincinnati and New York City; United States District Attorney, Southern District N. Y., 1898.

²⁵ COMSTOCK, CYRUS BALLOU. (1831-1910.) Born West Wrentham, Mass. Colonel in the Engineer Corps of the United States Army and Brevet Major General United States Volunteers. Retired from army in 1895. Wrote several books on Engineering.

²⁶ PORTER, HORACE. Born Huntington, Pa., 1837. Studied at Lawrenceville, N. J., and Harvard Scientific School. Graduated at West Point, 1860. Became Chief of Ordnance. Brigadier and Major General. Resigned from army in 1873 and became vice-president of the Pullman Company and president and director of numerous railroads and manufacturing corporations. Was a close friend of General Grant, and while American Ambassador to France he brought back here from that country at his own expense, the body of John Paul Jones.

known, to kill and murder, within the Military Department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln, late, at the time of said combining, confederating and conspiring, President of the United States of America, and Commander-in-Chief of the Army and Navy thereof; Andrew Johnson, now Vice-President of the United States aforesaid; William H. Seward, Secretary of State of the United States aforesaid; and Ulysses S. Grant, Lieutenant-General of the Army of the United States aforesaid, then in command of the Armies of the United States, under the direction of the said Abraham Lincoln; and in pursuance of and in prosecuting said malicious, unlawful, and traitorous conspiracy aforesaid, and in aid of said rebellion, afterward, to-wit, on the 14th day of April, A. D. 1865, within the Military Department of Washington aforesaid, and within the fortified and intrenched lines of said Military Department, together with said John Wilkes Booth and John H. Surratt, maliciously, unlawfully, and traitorously murdering the said Abraham Lincoln, then President of the United States and Commander-in-Chief of the Army and Navy of the United States, as aforesaid; and maliciously, unlawfully, and traitorously assaulting, with intent to kill and murder, the said William H. Seward, then Secretary of State of the United States, as aforesaid; and lying in wait with intent maliciously, unlawfully, and traitorously to kill and murder the said Andrew Johnson, then being Vice-President of the United States; and the said Ulysses S. Grant, then being Lieutenant-General, and in command of the Armies of the United States, as aforesaid.

Specification.—In this: that they, the said David E. Herold, Edward Spangler, Lewis Payne, Michael O'Laughlin, Samuel Arnold, Mary E. Surratt, George A. Atzerodt, and Samuel A. Mudd, together with the said John H. Surratt and John Wilkes Booth, incited and encouraged thereunto by Jefferson Davis, George N. Sanders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young, and others unknown, citizens of the United States aforesaid, and who were then engaged in armed rebellion against the United States of America, within the limits thereof, did, in aid of said armed rebellion, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 15th day of April, A. D. 1865, combine, confederate, and conspire together, at Washington City, within the Military Department of Washington, and within the intrenched fortifications and military lines of the United States, there being, unlawfully, maliciously, and traitorously to kill and murder Abraham Lincoln, then President of the United States aforesaid, and Commander-in-Chief of the Army and Navy thereof; and unlawfully, maliciously, and traitorously to kill and murder Andrew Johnson, now Vice-President of the said United States, upon whom, on the death of said Abraham Lincoln, after the 4th day of March, A. D. 1865, the office of President of the said United States, and Commander-in-Chief of the Army and Navy thereof, would devolve; and to unlawfully, maliciously, and traitorously kill and mur-

der Ulysses S. Grant, then Lieutenant-General, and, under the direction of the said Abraham Lincoln, in command of the Armies of the United States, aforesaid; and unlawfully, maliciously, and traitorously to kill and murder William H. Seward, then Secretary of State of the United States aforesaid, whose duty it was, by law, upon the death of said President and Vice-President of the United States aforesaid, to cause an election to be held for electors of President of the United States: the conspirators aforesaid designing and intending, by the killing and murder of the said Abraham Lincoln, Andrew Johnson, Ulysses S. Grant, and William H. Seward, as aforesaid, to deprive the Army and Navy of the said United States of a constitutional Commander-in-Chief; and to deprive the Armies of the United States of their lawful commander; and to prevent a lawful election of President and Vice-President of the United States aforesaid; and by the means aforesaid to aid and comfort the insurgents engaged in armed rebellion against the said United States, as aforesaid, and thereby to aid in the subversion and overthrow of the Constitution and laws of the said United States.

And being so combined, confederated, and conspiring together in the prosecution of said unlawful and traitorous conspiracy, on the night of the 14th day of April, A. D. 1865, at the hour of about 10 o'clock and 15 minutes p. m., at Ford's theater, on Tenth Street, in the City of Washington, and within the military department and military lines aforesaid, John Wilkes Booth, one of the conspirators aforesaid, in pursuance of said unlawful and traitorous conspiracy, did, then and there, unlawfully, maliciously, and traitorously, and with intent to kill and murder the said Abraham Lincoln, discharge a pistol then held in the hands of him, the said Booth, the same being then loaded with powder and a leaden ball, against and upon the left and posterior side of the head of the said Abraham Lincoln; and did thereby, then and there, inflict upon him, the said Abraham Lincoln, then President of the said United States, and Commander-in-Chief of the Army and Navy thereof, a mortal wound, whereof, afterward, to-wit, on the 15th day of April, A. D. 1865, at Washington City aforesaid, the said Abraham Lincoln died; and thereby, then and there, and in pursuance of said conspiracy, the said defendants, and the said John Wilkes Booth and John H. Surratt, did unlawfully, traitorously and maliciously, and with the intent to aid the rebellion, as aforesaid, kill and murder the said Abraham Lincoln, President of the United States, as aforesaid.

And in further prosecution of the unlawful and traitorous conspiracy aforesaid, and of the murderous and traitorous intent of said conspiracy, the said Edward Spangler, on said 14th day of April, A. D. 1865, at about the same hour of that day, as aforesaid, within said military department and the military lines aforesaid, did aid and assist the said John Wilkes Booth to obtain entrance to the box in said theater, in which said Abraham Lincoln was sitting at the time he was assaulted and shot, as aforesaid, by

John Wilkes Booth; and also did, then and there, aid said Booth in barring and obstructing the door of the box of said theater, so as to hinder and prevent any assistance to or rescue of the said Abraham Lincoln against the murderous assault of the said John Wilkes Booth; and did aid and abet him in making his escape after the said Abraham Lincoln had been murdered in manner aforesaid.

And in further prosecution of said unlawful, murderous, traitorous conspiracy, and in pursuance thereof, and with the intent as aforesaid, the said David E. Herold did, on the night of the 14th of April, A. D. 1865, within the military department and military lines aforesaid, aid, abet, and assist the said John Wilkes Booth in the killing and murder of the said Abraham Lincoln, and did, then and there, aid and abet and assist him, the said John Wilkes Booth, in attempting to escape through the military lines aforesaid, and did accompany and assist the said John Wilkes Booth in attempting to conceal himself and escape from justice, after killing and murdering said Abraham Lincoln as aforesaid.

And in further prosecution of said unlawful and traitorous conspiracy, and of the intent thereof, as aforesaid, the said Lewis Payne did, on the same night of the 14th day of April, A. D. 1865, about the same hour of 10 o'clock and 15 minutes p. m., at the City of Washington, and within the military department and the military lines aforesaid, unlawfully and maliciously make an assault upon the said William H. Seward, Secretary of State, as aforesaid, in the dwelling-house and bed-chamber of him, the said William H. Seward, and the said Payne did, then and there, with a large knife held in his hand, unlawfully, traitorously, and in pursuance of said conspiracy, strike, stab, cut, and attempt to kill and murder the said William H. Seward, and did thereby, then and there, and with the intent aforesaid, with said knife, inflict upon the face and throat of the said William H. Seward divers grievous wounds. And the said Lewis Payne, in further prosecution of said conspiracy, at the same time and place last aforesaid, did attempt, with the knife aforesaid, and a pistol held in his hand, to kill and murder Frederick W. Seward, Augustus H. Seward, Emrick W. Hansell, and George F. Robinson, who were then striving to protect and rescue the said William H. Seward from murder by the said Lewis Payne, and did, then and there, with said knife and pistol held in his hands, inflict upon the head of said Frederick W. Seward, and upon the persons of said Augustus H. Seward, Emrick W. Hansell, and George F. Robinson, divers grievous and dangerous wounds, with intent then and there, to kill and murder the said Frederick W. Seward, Augustus H. Seward, Emrick W. Hansell, and George F. Robinson.

And in further prosecution of said conspiracy and its traitorous and murderous designs, the said George A. Atzerodt did, on the night of the 14th of April, A. D. 1865, and about the same hour of the night aforesaid, within the military department and the military lines aforesaid, lie in wait for Andrew Johnson, then Vice-Presi-

dent of the United States aforesaid, with the intent unlawfully and maliciously to kill and murder him, the said Andrew Johnson.

And in the further prosecution of the conspiracy aforesaid, and of its murderous and treasonable purposes aforesaid, on the nights of the 13th and 14th of April, A. D. 1865, at Washington City, and within the military department and the military lines aforesaid, the said Michael O'Laughlin did, then and there, lie in wait for Ulysses S. Grant, then Lieutenant-General and Commander of the Armies of the United States, as aforesaid, with intent, then and there, to kill and murder the said Ulysses S. Grant.

And in further prosecution of said conspiracy, the said Samuel Arnold did, within the military department and the military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 15th day of April, A. D. 1865, combine, conspire with, and aid, counsel, abet, comfort and support, the said John Wilkes Booth, Lewis Payne, George Atzerodt, Michael O'Laughlin and their confederates in said unlawful, murderous, and traitorous conspiracy, and in the execution thereof, as aforesaid.

And in further prosecution of said conspiracy, Mary E. Surratt did, at Washington City, and within the military department and military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 20th day of April, A. D. 1865, receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O'Laughlin, George A. Atzerodt, Samuel Arnold, and their confederates, with the knowledge of the murderous and traitorous conspiracy aforesaid, and with intent to aid, abet, and assist them in the execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln, as aforesaid.

And in further prosecution of said conspiracy, the said Samuel A. Mudd did, at Washington City, and within the military department and military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 20th day of April, A. D. 1865, advise, encourage, receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O'Laughlin, George A. Atzerodt, Mary E. Surratt, and Samuel Arnold and their confederates with knowledge of the murderous and traitorous conspiracy aforesaid and with the intent to aid, abet and assist them in the execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln, in pursuance of said conspiracy in manner aforesaid.

To this charge and specifications the accused severally pleaded *Not Guilty*.

May 11.

The following members of the bar appeared as counsel for the prisoners:

Thomas Ewing, Jr.,²⁷ for Samuel A. Mudd, Samuel Arnold and Edward Spangler.

Frederick Aikin,²⁸ *John W. Clappitt*²⁹ and *Reverdy Johnson*,³⁰ for Mary E. Surratt.

Frederick Stone,³¹ for David E. Herold.

²⁷ EWING, THOMAS. (1829-1896.) Born Lancaster, Ohio. Son of Thomas Ewing. United States Senator and member of the Cabinets of Presidents Harrison and Taylor. Private secretary to President Taylor, 1850. Studied law in Cincinnati and began practice there, then removed to Leavenworth, Kansas, 1856. Was a member of the Leavenworth Constitutional Convention and First Chief Justice of the State. Entered the Civil War (1862) as a Colonel. Brigadier General, 1863. Major General, 1865. Practiced law in Washington after the war but removed to Lancaster in 1871. Member of Congress, 1877-1881. Defeated for Governor of Ohio, 1879, and removed to New York City, 1881.

²⁸ AIKEN, FREDERICK ARGYLE. (1837-1878.) Born Boston, Mass. Educated at Middlebury College and Harvard Law School. Editor and part proprietor of the Burlington (Vt.) Sentinel. Resided in Washington, D. C., as correspondent for the Sentinel, 1858-1859. Secretary of the Democratic National Convention, 1860. During early years of Civil War was a volunteer aide with rank of Captain on staff of Gen. Hancock, receiving injuries in the service which hastened his death. After Surratt trial, he prepared some of the preliminary papers for the defense of Jefferson Davis. Admitted to the Supreme Court, 1865. Practiced in District of Columbia courts until 1868 when he left law to take up journalism again. During the Civil War and after it, assisted Col. Tom Florence in editing "The Constitutional Union." Editor "Sunday Gazette," 1869. City editor "Washington Chronicle," 1871. News and dramatic editor "National Republican." City editor "Washington Post," 1877. Died at Washington, D. C.

²⁹ CLAPPITT, JOHN WESLEY. Born Washington, D. C., 1841. Graduated Columbian (now George Washington) University, Washington, D. C., 1860. Studied law in Washington. Entered Civil War as member of Washington light infantry. Admitted to bar June, 1864. Served as counsel for Mrs. Surratt when barely 25 years of age. In 1866 sent by President to the territories and Pacific Coast to investigate and prosecute the depredations on the overland mail service, during which service he was elected judge of the city court of Corinne, Utah. Located in Chicago, 1871. Removed to Fort Sheridan, Lake Co., Ill. Counsel in Florida contested election cases before the House of the 46th and 47th Congresses and seated the Republican contestant in a Democratic House. Author of the legal and many of the political articles in the "Political Cyclopedia," also wrote "Echoes From the Rocky Mountains,

William E. Doster,³² for George A. Atzerodt and Lewis Payne.

Walter S. Cox,³³ for Michael O'Laughlin.

GENERAL T. M. HARRIS objected to the admission of Mr. Johnson as counsel before the Commission, on the ground that he did not recognize the moral obligation of an oath designed as a test of loyalty, or to enforce the obligation of loyalty to the Government of the United States, referring to a printed letter, dated Baltimore, October 7, 1864, upon "the constitutionality, legal and binding effect and bearing of the oath prescribed by the late Convention of our State, to be

Chicago, 1889." "The Story of Clouds Mills." Contributor to "The American Magazine," "Harper's" and the "North American."

³⁰ JOHNSON, REVERDY. (1796-1876.) Born and died at Annapolis, Md. Graduated St. John's College. Began practice of law at Annapolis 1815, but removed to Baltimore 1817; editor Maryland Reports, 1820-1827; State Senator, 1821-1827; United States Senator, 1845-1849, 1863-1868; delegate to Peace Convention; Minister to England, 1868.

³¹ STONE, FREDERICK. (1820-1899.) Born Alexandria, Va. Member Maryland Legislature, 1864-1871. Representative in Congress, 1867-1871. Judge Seventh Judicial District, Maryland, 1881. Died in La Plata, Md.

³² DOSTER, WILLIAM EMILE. Born Bethlehem, Pa., 1837. Graduated, Yale, 1857. Studied law Harvard law school, Easton and Philadelphia, Heidelberg, Germany, and Paris. Mustered out in 1864 as Brevet Brigadier General. Admitted to bar at Easton, Pa. Practiced one year at Washington, D. C., and engaged in trials before military commissions and court martials. Returned to Easton after the close of the Lincoln conspiracy trials and practiced law there until 1873, when he removed to Bethlehem, Pa. Registrar in Bankruptcy, 1868-1869. Counsel for the Lehigh Coal and Navigation Company, 25 years, and for the Bethlehem Iron and Steel Company, 23 years. For 15 years president of the New Street Bridge Co. Now vice-president of the Lehigh National Bank of Bethlehem. In 1915 published "Lincoln and the Episodes of the Civil War," which includes an account of the conspiracy trials.

³³ COX, WALTER SMITH. (1826-1902.) Born Georgetown, D. C. Graduated Georgetown College and Harvard Law School. Admitted to Bar, 1847. Recorder and President Board of Aldermen. Professor of Law, Columbian University. Appointed a Judge of the Supreme Court of the District of Columbia in 1879, and in 1882 presided at the trial of Guiteau for the murder of President Garfield.

taken by the voters of the State as the condition and qualification of the right to vote upon the New Constitution.”³⁴

Mr. Johnson. The Convention called to frame a new Constitution for the State was called under the authority of an act of the Legislature of Maryland, and under that alone. By that legislation, their proceedings were to be submitted to the then legal voters of the State. The Convention thought that they were themselves authorized not only to impose as an authority to vote what was not imposed by the then existing Constitution and laws, but to admit to vote those who were prohibited from voting by such Constitution and laws; and I said, in common with the whole bar of the State (and with what the bar throughout the Union would have said if they had been consulted), that to that extent they had usurped the authority under which alone they were authorized to meet, and that, so far, the proceeding was a nullity. They had prescribed this oath; and all that the opinion said, or was intended to say, was that to take the oath voluntarily was not a craven submission to usurped authority, but was necessary in order to enable the citizen to protect his rights under the then Constitution, and that there was no moral harm in taking an oath which the Convention had no authority to impose.

The objection was withdrawn.

The prisoners severally, through their counsel, asked leave to withdraw for the time their plea of “*Not Guilty*,” heretofore filed, so that they may plead to the jurisdiction of the COMMISSION.

The applications were granted.

The prisoners then severally offered the following pleas to the jurisdiction of the COMMISSION:

1. That this court has no jurisdiction in the proceedings against him, because he says he is not, and has not been, in the military service of the United States.

³⁴ The letter, published over the signature of the Hon. Réverdy Johnson, pending the adoption of the New Constitution of Maryland, contained the following passage: “Because the Convention transcended its power, as I am satisfied it has, that is no reason why the people should submit. On the contrary, it should lead them to adopt the only course left to redress the wrong. The taking of the oath under such circumstances, argues no unwillingness to surrender their rights. It is indeed the only way in which they can protect them, and no moral injunction will be violated by such a course, because the exaction of the oath was beyond the authority of the Convention, and, as a law, is therefore void.”

2. That loyal civil courts, in which all the offenses charged are triable, exist, and are in full and free operation in all the places where the several offenses charged are alleged to have been committed.

3. That the court has no jurisdiction in the matter of the alleged conspiracy so far as it is charged to have been a conspiracy to murder Abraham Lincoln, late President of the United States and William H. Seward, Secretary of State, because he says said conspiracy, and all acts alleged to have been done in the formation and in the execution thereof, are in the charges and specifications alleged to have been committed in the city of Washington, in which city are loyal civil courts in full operation in which all said offenses charged are triable.

4. This court has no jurisdiction in the matter of the crime of murdering Abraham Lincoln, late President of the United States and William H. Seward, Secretary of State, because he says said crimes and acts done in execution thereof are in the charges and specifications alleged to have been committed in the city of Washington, in which city are loyal and civil courts in full operation, in which said crimes are triable.

The *Judge Advocate* presented the following replication:

Now come the United States, and for answer to the special plea by the defendants, pleaded to the jurisdiction of the Commission in this case, say that this Commission has jurisdiction in the premises to try and determine the matters in the charge and specification alleged and set forth against the said defendant.

The court was cleared for the deliberation of the COMMISSION and on being reopened it was announced that the pleas to the jurisdiction were overruled.

The prisoners applied for a severance of their trials, which application was denied.

The prisoners then severally pleaded *not guilty*.

THE TESTIMONY FOR THE GOVERNMENT RELATING TO THE GENERAL CONSPIRACY.

Richard Montgomery. Went to Canada in the summer of 1864, have remained there until about two weeks ago; know George N. Sanders, Jacob Thompson, Clement C. Clay, Professor Holcomb, Beverly Tucker, W. C. Cleary, and Harrington; have frequently met them since the summer of 1864, at Niagara Falls, at Toron-

to, St. Catherines, and at Montreal. Thompson passed by several other names, one of which was Carson. Clay passed by the name of Hope, also Tracy, and another was T. E. Lacy.

Jacob Thompson, in the summer of 1864, said he had his friends (Confederates) all over the Northern States, who were

ready and willing to go any lengths to serve the cause of the South; that he could at any time have the tyrant Lincoln, and any other of his advisers he chose, put out of his way; he would have but to point out the man that he considered in his way, and his friends would put him out of it, and not let him know anything about it if necessary; that they would not consider it a crime when done for the cause of the Confederacy.

I repeated the conversation to Mr. Clay, who said, "That is so; we are all devoted to our cause, and ready to go any lengths—to do any thing under the sun to serve our cause."

In January this year, Jacob Thompson said a proposition had been made to him to rid the world of the tyrant Lincoln, Stanton, Grant and some others. The men who had made the proposition, he said, he knew were bold, daring men, and able to execute any thing they would undertake, without regard to the cost. He said he was in favor of the proposition, but deferred his answer until he had consulted with his Government at Richmond; he was then only waiting their approval; thought it would be a blessing to the people, both North and South, to have these men killed.

Have seen Lewis Payne, the prisoner in Canada, at the Falls in the summer of 1864; saw him again, and had some words with him at the Queen's Hotel in Toronto; had had an interview with Mr. Thompson, and on leaving the room met Payne in the passage way, talking with Mr. Clement C. Clay. While Mr. Clay was away spoke to Payne, and asked him

who he was. He said, "O, I am a Canadian."

The term "Canadian" was a common expression among the Confederates there, and was applied to those who were in the habit of visiting the States.

Have been in Canada since the assassination. A few days after, met Beverly Tucker at Montreal. He said a great deal about the wrongs that the South had received at the hands of Mr. Lincoln, and that he deserved his death, and it was a pity he did not meet with it long ago. He said it was too bad that the boys had not been allowed to act when they wanted to. "The boys" was an expression applied to the Confederate soldiers and others in their employ, who engaged in raids, and who were to assassinate the President.

Related the conversation I had had with Mr. Thompson to Mr. W. C. Cleary, confidential secretary to Mr. Thompson, and he told me that Booth was one of the parties to whom Thompson had reference; and he said it was too bad that the whole work had not been done; by which I understood him that they intended to assassinate a greater number than they succeeded in killing. Cleary remarked, They had better look out; we have not done yet. He added that they would never be conquered—would never give up.

Cleary said that Booth had been there, visiting Thompson, twice in the winter; he thought the last time was in December.

Thompson told me that Cleary was posted upon all his affairs.

(A paper containing a secret cipher, found among J. Wilkes

Booth's effects was handed to the witness.)

Am familiar with two of the secret ciphers used by the Confederates; this is one of them. I saw this cipher in 1864, in Mr. Clay's house at St. Catherines.

While in Canada I was in the service of the United States Government, seeking to acquire information in regard to the plans and purposes of the rebels who were assembled there. I adopted the name of James Thompson, and leading them to suppose this was my correct name, I adopted some other name at any hotel at which I might be stopping; was intrusted with dispatches from these Confederates to take to Richmond. I carried some to Gordonsville, with instructions to send them from there; received a reply to these dispatches, which I carried back to Canada, bringing them through Washington, and making them known to the United States Government; took no dispatches from the rebel Government to their agents in Canada without first delivering them to the authorities at Washington.

Frequently heard the subject of raids upon our frontier, and the burning of cities, spoken of by Thompson, Clay, Cleary, Tucker and Sanders. Mr. Clement C. Clay was one of the prime movers in the matter before the raids were started. The men I have reference to, more especially Mr. Clay and Mr. Thompson represented that they were acting under the sanction of their Government, and as having full power to do anything that they deemed expedient and for the benefit of their cause.

Was in Canada when arrange-

ments were made to fire the City of New York. I left Canada to bring the news to Washington two days before the attempt was made. It originated in Canada, and had the full sanction of these men.

Before the St. Albans' raid I knew of it; was not aware of the precise point aimed at, but informed the Government at Washington that these men were about setting out on a raid of that kind; also informed the Government of the intended raids upon Buffalo and Rochester, and by that means prevented them.

As to George N. Sanders, Mr. Clay told me I had better not tell him much; that he was a very good man to do their dirty work. Said Sanders was associated with men that they could not associate with; but that he was very useful in that way.

This paper I saw Mr. Clay write a very considerable portion of, and a part of the letter was written with my own pen in his house, in St. Catherines, Canada West; delivered a copy of that letter to Hon. C. A. Dana, Secretary of War, here in Washington; was instructed to deliver the original to Mr. Benjamin, Secretary of State of the Confederate States, if I could get to Richmond, and to tell him that I was informed of the names that were to be inserted in the blanks in the original letter. There are two or three such blanks left for names. There was no signature to the letter, which was omitted principally for my safety, and also that, in the event of its being seized, it could not be used as evidence against Mr. Clay. Mr.

Clay left Canada about the 1st January. (The original of the following letter was then read.)

St. Catherines, C. W., November 1, 1864.

Hon. J. P. Benjamin, Secretary of State, Richmond, Virginia:

Sir: You have doubtless learned through the press of the United States, of the raid on St. Albans, Vermont, by about twenty-five Confederate soldiers—nearly all of them escaped prisoners—led by Lieutenant Bennett H. Young; of their attempts and failure to burn the town; and of their robbery of three banks there of the aggregate amount of about \$200,000; of their arrest in Canada by United States forces, their commitment, and the pending preliminary trial. There are twelve or fourteen of the twenty-five who have been arrested, and are now in prison at Montreal, where the trial for commitment for extradition is now progressing. A letter from Hon. J. J. N. Abbott, the leading counsel for the prisoners, dated Montreal, 28th October, says to me: "We (prisoners' counsel) all think it quite clear that the facts will not justify a commitment for extradition under the law as it stands, and we conceive the strength of our position to consist in the documents we hold, establishing the authority of the raiders from the Confederate States Government. But there is no doubt that this authority might be made more explicit than it is, in so far as regards the particular acts complained of, and I presume the Confederate Government will consider it to be their duty to recognize officially the acts of Lieutenant Young and his party, and will find means to convey such recognition to the prisoners here, in such a form as can be proven before our courts. If this were accompanied or followed by a demand upon our Government that the prisoners be set at liberty, I think a good effect would be produced, although probably the application would not be received by the authorities. There will be at least a fortnight's time, and probably more, expended in the examination of witnesses; so that there will be plenty of time for anything that may be thought advisable to be done in behalf of the prisoners."

I met Mr. Young at Halifax, on my way here, in May last. He showed me letters from men whom I know, by reputation, to be true friends of States' rights, and therefore of Southern independence, vouching for his integrity as a man, his piety as a Christian, and his loyalty as a soldier of the South. After satisfying me that his heart was with us in our struggle, and that he had suffered imprisonment for many months as a soldier of the Confederate States army, from which he had escaped, he developed his plans for retaliating on the enemy some of the injuries and outrages inflicted upon the South. I thought them feasible and fully warranted by the law of nations, and therefore recommended him and his plans to the Secretary of War. He was sent back by the Secretary of War, with a commission as Second Lieutenant, to execute his plans and purposes, but to report to Hon. — and myself. We prevented his achieving or attempting what I am sure he could have done, for

reasons which may be fully explained hereafter. Finally, disappointed in his original purpose and in all the subsequent enterprises projected, he proposed to return to the Confederate States, via Halifax, but passing through the New England States, and burning some towns, and robbing them of whatever he could convert to the use of the Confederate Government. This I approved as justifiable retaliation. He attempted to burn the town of St. Albans, Vermont, and would have succeeded but for the failure of the chemical preparations with which he was armed. Believing the town was already fired in several places, and must be destroyed, he then robbed the banks of all the funds he could find—amounting to more than \$200,000. That he was not prompted by selfish or mercenary motives, and that he did not intend to convert the funds taken to his own use, but to that of the Confederate States, I am as well satisfied as I am that he is an honest man, a true soldier and patriot; and no one who knows him well will question his title to this character. He assured me, before going on the raid, that his efforts would be to destroy towns and farm houses, not to plunder or rob; but he said if, after firing a town, he saw he could take funds from a bank, or any house, which might inflict injury on the enemy and benefit his own Government, he would do so. He added, most emphatically, that whatever he took should be turned over to the Government or its representatives in foreign lands. My instructions to him, oft repeated, were “to destroy whatever was valuable; not to stop to rob; but if, after firing a town, he could seize and carry off money, or treasury or bank notes, he might do so, upon condition that they were delivered to the proper authorities of the Confederate States.” That they were not delivered according to his promise and undertaking was owing, I am sure, to the failure of his chemical compound, to fire the town, and to the capture of himself and men on Canadian soil, where they were surprised and overpowered by superior numbers from the United States. On showing me his commission and his instructions from Mr. Seddon—which were, of course, vague and indefinite—he said he was authorized to do all the damage he could to the enemy in the way of retaliation. If this be true, it seems to me the Confederate States Government should not hesitate to avow his act was fully authorized as warrantable retaliation. If the Government do not assume the responsibility of this raid, I think Lieutenant Y. and his men will be given up to the United States authorities. If so, I fear the exasperated and alarmed people of Vermont will exert cruel and summary vengeance upon them before they reach the prison at St. Albans.

The sympathies of nine-tenths of the Canadians are with Young and his men; a majority of all the newspapers justify or excuse his act as merely retaliatory, and they desire only the authority of the Confederate States Government for it to refuse their extradition. The refusal of extradition is fully warranted by the like course of the United States in many cases, cited lately in the Canadian papers, which I can not now repeat, but you can readily find. The refusals of extradition would have a salutary political influence, it

is thought, both in the British Provinces and in England. I can not now explain why. I trust, therefore, for the sake not only of the brave soldiers who attempted this daring exploit (which has caused a panic throughout the United States bordering on Canada, and the organization of forces to resist, as well as the arbitrary and tyrannous order of General Dix touching the coming Presidential election) but, for the sake of our cause and country, that the President will assume the responsibility of the act of Lieutenant Bennett H. Young, and that you will signify it in such form as will entitle it to admission as evidence in the pending trial.

I send the special messenger who brings this, that your answer may be brought back by him within ten days or by 11th instant. The final judgment can and will be postponed for the action of the Confederate States Government as long as possible—certainly for ten days.

I avail myself of this opportunity to bring to your notice the case of Captain Charles H. Cole, another escaped prisoner of General Forrest's command, who was taken about six weeks since in the Michigan (the Federal war steamer on Lake Erie), and is charged with an attempt at piracy (for attempting to capture the vessel), with being a spy, etc. The truth is, that he projected and came very near executing a plan for the capture of that vessel and the rescue of the prisoners on Johnson's Island. He failed only because of the return of the Captain (Carter) of the Michigan a day sooner than expected, and the betrayal (in consequence of C.'s return) of the entire plot. The only plausible ground for charging him with being a spy is that he was in Sandusky, on Johnson's Island, and in the Michigan frequently, without having on his person the Confederate uniform, but wearing the dress of a private citizen. Mr. — and I have addressed a letter to the commandant at Johnson's Island, protesting against his being treated as a spy for the following reasons: "That he was in the territory of the United States as a prisoner against his consent; that he escaped by changing his garb; that he had no Confederate uniform when he visited Sandusky, Johnson's Island, and the Michigan; that he did not visit them as an emissary from the Confederate States; that whatever he conceived, he had not executed anything; that he had conveyed no information to his Government, and did not contemplate conveying any information to the Government." His trial has been postponed. I know not why, or to what time. His exchange should be proposed, and notice given that any punishment inflicted on him will be retaliated upon an officer of equal rank. He is a very brave and daring soldier and patriot, and deserves the protection of his Government.

I wrote to you on the 14th of June; to the President 25th July, and to you again on the 11th August and 12th September last. I trust you received those letters. Mr. H. (who, I see, has gotten into the Confederate States) has doubtless explained things here. I have never received a line from you or any person, except my brother, at Richmond.

I have not changed the views expressed in my former communications. All that a large portion of the Northern people—especially in the Northwest—want to resist the oppressions of the despotism at Washington, is a leader. They are ripe for resistance, and it may come soon after the Presidential election. At all events, it must come, if our armies are not overcome and destroyed or dispersed. No people of the Anglo-Saxon blood can long endure the usurpations and tyrannies of Lincoln. Democrats are more hated by Northern Republicans than Southern rebels, and will be as much outraged and persecuted if Lincoln is re-elected. They must yield to a cruel and disgraceful despotism or fight. They feel it and know it.

I do not see that I can achieve anything by remaining longer in this Province, and, unless instructed to stay, shall leave here by 20th instant for Halifax, and take my chances for running the blockade. If I am to stay till spring, I wish my wife to join me under flag of truce, if possible. I am afraid to risk a winter's residence in this latitude and climate.

I need not sign this. The bearer and the person to whom it is addressed can identify me.

But I see no reasons why your response should not be signed and sealed, so as to make it evidence, as suggested, in respect to the St. Albans' raid. A statement of prisoners' counsel has been sent by way of Halifax and Wilmington, but it may never reach you, or not in time for the deliverance of the prisoners. This is my chief reason for sending this by one I can trust. Please reply promptly, and start the messenger back as soon as possible. He will explain the character of his mission. Send under a seal that can not be broken without being discovered.

I am, respectfully, your most obedient servant.

N. B. See the Secretary of War (Mr. Seddon) touching Young's case.

William H. Rohrer swore that the letter was in Clay's handwriting.

Sanford Conover. Was born in New York and educated there. Since October last have resided in Montreal, Canada. Before that I was conscripted, from near Columbia, S. C., into the rebel service, was detailed as a clerk and served in the Rebel War Department at Richmond for upward of six months. James A. Seddon was at that time Secretary of War.

While in Canada was intimately acquainted with George N. Sanders, Jacob Thompson, Clem-

ent C. Clay, Dr. Blackburn, Beverly Tucker, William C. Cleary, Lewis Castleman, Rev. M. Cameron, Mr. Porterfield, Captain Magruder, General Frost of Missouri, General Carroll of Tennessee, and a number of others of less note. Of the accused who visited these persons, I knew John Wilkes Booth and John H. Surratt. Booth I saw but once, in the latter part of October last; saw him with Sanders, and also at Mr. Thompson's. Saw him principally about the St. Lawrence Hall. He was strutting about there, dissipating, playing billiards, etc.

Surratt I saw in Montreal about the 6th or 7th of April, on several successive days. Saw him in Mr. Thompson's room, and, from the conversation, Surratt had just brought dispatches from Richmond to Mr. Thompson; one from Mr. Benjamin, the Rebel Secretary of State, and also a letter, in cipher, from Mr. Davis. Had previously had conversation with Mr. Thompson on the plot to assassinate Mr. Lincoln and his Cabinet, and had been invited by Mr. Thompson to participate in the enterprise.

When Surratt brought the dispatches Thompson said, this makes the thing all right, referring to the assent of the rebel authorities. Mr. Lincoln, Mr. Johnson, the Secretary of War, the Secretary of State, Judge Chase and General Grant were to be victims of this plot.

Mr. Thompson said that it would leave the Government entirely without a head, as there was no provision in the Constitution by which they could elect another President. Mr. Welles (Secretary of the Navy) Mr. Thompson said it was not worth while to kill.

At my first interview with Mr. Thompson at his room in the St. Lawrence Hall Hotel, Montreal, in early part of February last, he said, some of our boys are going to play a grand joke on Abe and Andy—it was to kill them, or rather, to remove them from office. He said it was only removing them from office; the killing of a tyrant was no murder. Thompson had blank commissions, and he told me that he had conferred one on Booth; that he and everybody engaged in the enterprise would be commis-

sioned; so that, if it succeeded or failed, if they escape to Canada, they could not be claimed under the Extradition Treaty.

The commission conferred on Bennett H. Young, the St. Albans' raider, was a blank commission, filled up and conferred by Mr. Clay. The name attached to it was that of James A. Seddon, Secretary of War.

These commissions were left blank, except the signature of Seddon, the rebel Secretary of War; the names were filled up in Canada. These commissions were conferred at pleasure upon those who engaged in any enterprise, and it was understood to be a cover, so that in case they were detected they could claim that they were rebel soldiers, and to be protected and treated as prisoners of war. Booth was specially commissioned for the assassination project.

The day of the assassination had a conversation with Mr. Wm. C. Cleary at the St. Lawrence Hotel, Montreal. We were speaking of the rejoicings in the States over the surrender of Lee and the capture of Richmond, etc., and Cleary remarked that they would put the laugh on the other side of their mouth in a day or two. The conspiracy was talked of at that time about as commonly as one would speak of the weather.

Before this had a conversation with George N. Sanders, who asked me if I knew Booth very well. He apprehended that Booth would make a fizzle of it; that he was dissipated and reckless, and he was afraid the whole thing would prove a failure.

While in Canada was a correspondent of the New York Trib-

une and communicated the contemplated assassination of the President. They declined to publish, because they had been accused of publishing sensation stories.

Saw John H. Surratt in Montreal within four or five days of the assassination of the President; inferred he was to take his part in the conspiracy on the President and his Cabinet.

Mr. Thompson in February said that killing a tyrant in such a case was no murder. He asked me if I had ever read the work entitled Killing, no Murder, a letter addressed by Col. Titus to Oliver Cromwell. Mr. Hamlin was also to have been included had the scheme been carried out before 4th of March. In the conversation in April Mr. Hamlin was omitted, and Vice-President Johnson put in his place.

There was a proposition before these parties to destroy the Croton Dam, by which the City of New York is supplied with water. It was supposed it would not only damage the manufactories, but distress the people generally very much. Mr. Thompson remarked that they would have plenty of fires and the whole city would soon be destroyed by a general conflagration, without sending any Kennedy or anybody else there; and, he added, if they had thought of this scheme before, they might have saved some necks.

Heard of talk about the attempted descent upon Chicago last year; that they had some eight hundred men concealed there; their object was the release of the rebel prisoners at Camp Douglas.

Cross-examined. Never saw either Atzerodt or Payne in Canada. Received compensation as correspondent to the Tribune, but have never received any pay from the Government, nor the promise of any, nor have I ever received any pay from the Confederate Government. The parties in Canada did not know I corresponded with the Tribune. Was freely admitted to their meetings and enjoyed their confidence. Heard the burning of the City of New York discussed by these parties, but knew no particulars until after the attempt had been made. Never heard the name of Mary E. Surratt mentioned in any of these conferences. In February I heard the project of capturing the President and carrying him off to Richmond talked of. When Mr. Thompson first suggested I should participate in the attempted assassination, I asked if it would meet with the approbation of the Government at Richmond; he said he thought it would, but he would know in a few days. That was early in February. It was in April, in Surratt's presence, that he referred to the dispatches that had been received from Richmond, part of which were in cipher, as having furnished the assent.

Re-examined. The Dr. Blackburn to whom I referred is the same that packed a number of trunks with infected clothing, for the purpose of introducing pestilence into the States. I have seen him associating with Jacob Thompson, George N. Sanders, his son, Lewis Sanders, Ex-Gov. Westcott of Florida, Lewis Castleman, William C. Cleary, Mr. Porterfield, Capt. Magruder and

a number of rebels of less note. Dr. Blackburn was there known and represented himself as an agent of the so-called Confederate Government, just as Jacob Thompson was an agent. I knew of Dr. Blackburn's trying to employ Mr. John Cameron, who lived in Montreal, to accompany him to Bermuda, for the purpose of taking charge of goods infected with yellow fever to bring to the cities of New York, Philadelphia and, I understood, Washington. Cameron declined to go, being fearful of taking the yellow fever and dying himself. Compensation to the amount of several thousand dollars, he told me, had been offered him, which was to be paid by Dr. Blackburn, or by other rebel agents. Heard Blackburn say that he went from Montreal to Bermuda, or some of the West India Islands, about a year ago last June, for the express purpose of attending cases of yellow fever and collecting infected clothing and forwarding it to New York, but for some reason the scheme failed. Jacob Thompson, Mr. Cleary and Lewis Sanders were present when Dr. Blackburn spoke of his enterprise. They all favored it, and were all very much interested in it.

As to the Croton Dam at New York: Dr. Blackburn proposed to poison the reservoirs, and made a calculation of the amount of poisonous matter it would require to impregnate the water so far as to render an ordinary draught poisonous and deadly. He had taken the capacity of the reservoirs, and the amount of water that was generally kept in them. Strychnine, arsenic, prussic acid, and a number of others

were spoken of as the poisons which he proposed to use. Blackburn regarded the scheme as feasible; Mr. Thompson feared it would be impossible to collect so large a quantity of poisonous matter without exciting suspicion and leading to the detection of the parties. Jacob Thompson fully approbated the enterprise and discussed it freely, together with Mr. Lewis Sanders, Mr. Cleary and Mr. M. A. Pallen of Mississippi, who had been a surgeon in the rebel army. When Mr. Thompson made the suggestion that the collection of so large an amount of poison might attract attention to the operation, Mr. Pallen and others thought it could be managed in Europe. Pallen is a physician.

Knew in Toronto Dr. Stuart Robinson, a doctor of divinity, a refugee from Kentucky, where he had been editor of a journal called the True Presbyterian. He was present when some of these schemes were being discussed. He approved of the poisoning of the Croton water. He said anything under heaven that could be done would be justifiable under the circumstances. He is regarded as one of the most intense of all the traitors who have taken refuge in Canada; is related to the Breckinridges of Kentucky. Dr. Robinson was on intimate terms with Jacob Thompson and Dr. Blackburn.

Saw John H. Surratt in Canada three or four days after the assassination of the President. I learned immediately after that Surratt was suspected; that officers were on his track, and that he had decamped.

When Mr. Thompson received the dispatches from Richmond in

April assenting to the assassination, there were present Mr. Surratt, General Carroll of Tennessee, Mr. Castleman and there were one or two others in the room, sitting farther back. General Carroll expressed himself as more anxious that Mr. Johnson should be killed than anybody else. He said that if the damned prick-louse were not killed by somebody he would kill him himself. His expression was a word of contempt for a tailor, so I understood.

Booth went by the nickname of Pet.

The firing of New York City was recognized among these parties as having been performed by the authority of the rebel Government, and was by the direction of Mr. Thompson. Thompson said Kennedy deserved to be hanged, and he was devilish glad he had been, because he was a stupid fellow, and a bungler, and had managed things badly.

Have always been loyal to the Government of the United States and escaped from the rebel service the first moment I had opportunity.

James B. Merritt. I was born in Canada, while my parents were on a visit from their home, Oneida County, New York. Am a physician, and have resided for about a year in Canada; part of the time at Windsor, and part at North Dumfries, Waterloo County.

In October or November I met at Toronto, George Young, formerly of Morgan's command; a man named Ford, also from Kentucky, and another named Graves from Louisville. Young asked me if I had seen Colonel Steele before leaving Windsor. Steele

was a rebel and had been in the rebel service. He said, we have something on the tapis of much more importance than any raids we have made or can make. He said it was determined that Old Abe should never be inaugurated—that, I believe, was his expression. They had plenty of friends in Washington, he said; and, speaking of Mr. Lincoln, he called him a damned old tyrant. Was afterward introduced to George N. Sanders by Colonel Steele. Asked Steele what was going to be done, or how he liked the prospects of the Presidential election, and he replied, the damned old tyrant never will serve another term if he is elected. Mr. Sanders then said he (Lincoln) would keep himself mighty close, if he did serve another term.

About the middle of February a meeting of rebels was held in Montreal, to which I was invited by Captain Scott. There were ten or fifteen present; among them Sanders, Colonel Steele, Captain Scott, George Young, Byron Hill, Caldwell, Ford, Kirk, Benedict and myself. A letter was read by Sanders, which he said he had received from the President of our Confederacy, meaning Jefferson Davis, the substance of which was that if the people in Canada and the Southerners in the States were willing to submit to be governed by such a tyrant as Lincoln, he did not wish to recognize them as friends or associates; and he expressed his approbation of whatever measures they might take to accomplish this object.

Sanders named a number of persons who were ready and willing, as he said, to engage in the

undertaking to remove the President, Vice-President, the Cabinet and some of the leading Generals; and that there was any amount of money to accomplish the purpose, meaning the assassination. Booth's name was mentioned, as also were the names of George Harper, Charles Caldwell, one Randall and Harrison, by which name Surratt was known, and whom I saw in Toronto. Another person spoken of by Sanders was one they called Plug Tobacco, or Port Tobacco. Think I saw prisoner, E. Herold, in Canada. Sanders said Booth was heart and soul in this project of assassination, and felt as much as any person could feel, for the reason that he was a cousin to Beall that was hung in New York. He said that if they could dispose of Mr. Lincoln, it would be an easy matter to dispose of Mr. Johnson; he was such a drunken sot it would be an easy matter to dispose of him in some of his drunken revelries. This letter said that if the President, Vice-President and Cabinet, or Mr. Seward, could be disposed of, it would be satisfying the people of the North; that they (the Southerners) had friends in the North, and that peace could be obtained on better terms than could be otherwise obtained; that they (the rebels) had endeavored to bring about the war between the United States and England, and that Mr. Seward, through his energy and sagacity, had thwarted all their efforts. This was suggested as one of the reasons for removing him.

In April at the Queen's Hotel, I saw Harper, Caldwell, Randall, Charles Holt and a man called Texas. Harper said they

were going to the States, and were going to kick up the damndest row that had ever been heard of. An hour afterward I met Harper, and he said if I did not hear of the death of Old Abe, and of the Vice-President, and of General Dix, in less than ten days, I might put him down as a damned fool. This was 6th April.

Saw Booth in Canada two or three times; I sat at the table with him once at the St. Lawrence; Sanders, Scott and Steele were at the same table. Sanders conversed with Booth, and we all drank wine at Mr. Sanders' expense. Have seen Booth a good many times on the stage, and know him very well by sight.

Cross-examined. The man called Harrison I saw in Canada two or three times. Was on confidential terms with the rebels in Canada because I represented myself as a good Southerner. Nine-tenths of the people in Canada are rank rebel sympathizers, and my practice was mostly among Southerners. Have never received a dollar from the Government for furnishing any information from Canada, nor have I ever received anything from the rebels for services rendered them.

Lieutenant-General U. S. Grant. Since 4th of March, 1864, have been in the command of the armies of the United States. Met Jacob Thompson, formerly Secretary of the Interior under President Buchanan's administration, when the army was lying opposite Vicksburg, in January, 1863. He came on Admiral Porter's flagship and I was sent for to meet him. He pretended to be under

a flag of truce, and he had therefore to be allowed to go back again. He professed to be in the military service of the rebels.

Cross-examined. All the civil courts of the city are in operation. Am not prepared to say exactly to what point the Department of Washington extends. Understand that martial law extends south of Annapolis, although I have never seen the order.

Samuel P. Jones. Resided in Richmond during a part of the war. Have often heard the officers and men of the Confederate army discussing the assassination of President Lincoln. They said they would like to see him brought there, dead or alive, and they thought it could be done. Have heard sums offered to be paid, with the Confederate sum, for any person or persons to go north and assassinate the President.

Henry Von Steinacker. Was in the Confederate service as an engineer officer on the staff of General Johnson. In the summer of '63, at Swift, near Harrisburg, was overtaken by three citizens, and rode with them some twenty hours. The name of one was Booth and another Shepherd.

(A photograph of John Wilkes Booth being shown to the witness, he identified a resemblance between it and the person referred to.)

Was asked by Booth and by the others what I thought of the probable success of the Confederacy. Told them, after such a chase as we had just had from Gettysburg, thought it looked very gloomy. Booth replied,

that is nonsense. If we only act our part, the Confederacy will gain its independence. Old Abe Lincoln must go up the spout, and the Confederacy will gain its independence anyhow. Understood he meant the President must be killed. He said as soon as the Confederacy was nearly giving out, or as soon as they were nearly whipped, this would be their final resource to gain their independence. A few days after these three citizens were at the camp of the Second Virginia Regiment. There was a secret meeting there of the officers to send men to release rebel prisoners to burn northern cities and to kill the President and his Cabinet. Heard them speak of the Golden Circle and the Sons of Liberty being organized for this purpose.

Hosea B. Carter. Reside in New Hampshire. I was at the St. Lawrence Hall, Montreal, Canada, from September till February last. Met George N. Sanders, Clement C. Clay, Beverly Tucker, Dr. Blackburn, Dr. Pallen, J. Wilkes Booth, General Carroll from Memphis, an old gentleman from Florida that wore a cue—I think his name was Westcott—a Dr. Wood, a gentleman named Clark, and many others whose names I do not now recollect. Do not remember I saw Jacob Thompson there. Saw him at Niagara Falls on the 17th of June. Some twenty or thirty Southerners boarded at the St. Lawrence Hall, and usually associated together and very little with other people who came there, either English or American.

Frequently observed George N. Sanders in intimate association

with Booth, and others of that class, in Montreal. Used to see a man named Payne nearly every morning; think they called him John. He was one of the Payne brothers, two of whom were arrested for the St. Albans raid; but Lewis Payne do not think I have seen before.

Dr. Blackburn came to the St. Lawrence Hall about 20th October last. He seemed to associate on terms of intimacy with all those I have named but Booth. Blackburn was one of that clique of men who were known there as Confederates.

John Deveny. Have resided in Washington for a year or two. Was formerly a Lieutenant in Fourth Maryland Regiment. In July, 1863, was in Montreal and left February of this year. Was well acquainted with John Wilkes Booth. First time I saw him in Canada he was in the St. Lawrence Hotel, Montreal, talking with George N. Sanders, in October. They were talking confidentially and drinking together. Also saw in Canada, at the same time, Jacob Thompson of Mississippi, who was Secretary of the Interior under the administration of President Buchanan; also Clement C. Clay of Alabama, formerly United States Senator, Beverly Tucker, and several others who were pointed out to me. Spoke to Booth, and asked him if he was going to play there; he said he was not—he just came on a pleasure trip.

Next time I saw Booth was at the Kirkwood House in this city, on 14th April, between 5 and 6. I asked, are you going to play here again? He replied, no, I am not going to play again; I

am in the oil business. I laughed, it being a common joke to talk about the oil business. A few minutes later saw him come down the street on horseback, riding a bay horse. The next I saw of him was when he jumped out of the box of the theater, and fell on one hand and one knee, when I recognized him. He fell with his face toward the audience. I said, he is John Wilkes Booth, and he has shot the President. Made that remark right there. Heard the words, *Sic semper tyrannus*, shouted in the President's box before I saw the man. He had a knife in his hand as he went across the stage. If he made any remark as he went across the stage I did not notice it. The excitement was very great.

William E. Wheeler. Reside in Chicopee, Mass. Was at Montreal, Canada, in October or November, when I saw John Wilkes Booth in front of the St. Lawrence Hall. Asked him if he was going to open the theater there; he said he was not. He left me and entered into conversation with a person who was pointed out to me as George N. Sanders.

Henry Finecas. Reside in Boston, Mass., and have been in the United States service as an officer. In February last was in Montreal, Canada. Heard a conversation between George N. Sanders and Wm. C. Cleary at the St. Lawrence Hall on 14th or 15th of February. Heard Cleary say, I suppose they are getting ready for the inauguration of Lincoln next month. Sanders said, Yes; if the boys only have luck Lincoln won't trouble them much longer. Cleary asked, Is everything well? Sanders re-

plied, O, yes; Booth is bossing the job.

Mrs. Mary Hudspeth. In November last was riding on the Third avenue cars in New York City. Overheard the conversation of two men, talking most earnestly. One said he would leave for Washington the day after tomorrow. The other was going to Newberg, or Newbern, that night. One was a young man with false whiskers. He was a young man of education. The other, whose name was Johnson, was not. Noticed that the hand of the younger man was very beautiful, and showed that he had led a life of ease, not of labor. They exchanged letters while in the car. When the one who had the false whiskers put back the letters in his pocket, I saw a pistol in his belt. Over

heard the younger say that he would leave for Washington the day after tomorrow; the other was very angry because it had not fallen on him to go to Washington.

After they left, my daughter, who was with me, picked up a letter which was lying on the floor of the car, immediately under where they sat, and gave it to me.

These are the letters; both were contained in one envelope. After I found their character, I took them first to General Scott, who asked me to read them to him. He said he thought they were of great importance, and asked me to take them to General Dix. I did so.

(The following letters were then read and offered in evidence:)

Dear Louis: The time has at last come that we have all so wished for, and upon you every thing depends. As it was decided before you left, we were to cast lots. Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback—Abe must die, and now. You can choose your weapons. The cup, the knife, the bullet. The cup failed us once, and might again. Johnson, who will give this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he can not wreak it upon the fountain-head, he will upon some of the blood-thirsty Generals. Butler would suit him. As our plans were all concocted and well arranged, we separated, and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete, that without one knew your face, no police telegraphic dispatch would catch you. The English gentleman, Harcourt, must not act hastily. Remember he has ten days. Strike for your home, strike for your country; hide your time, but strike sure. Get introduced, congratulate him, listen to his stories—not many more will the brute tell to earthly friends. Do any thing but fail, and meet us at the appointed place within the fortnight. Inclose this note, together with one of poor Leene. I will give the reason for this when we meet. Return by

Johnson. I wish I could go to you, but duty calls me to the West; you will probably hear from me in Washington. Sanders is doing us no good in Canada.

Believe me, your brother in love,

CHARLES SELBY.

St. Louis, October 21, 1864.

Dearest Husband: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time, only sent me one short note—a few cold words—and a check for money, which I did not require. What has come over you? Have you forgotten your wife and child? Baby calls for papa until my heart aches. We are so lonely without you. I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you and tell you to come home. I am so ill, not able to leave my room; if I was, I would go to you wherever you were, if in this world. Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.

LEENEA.

Charles A. Dana. The letters found by Mrs. Hudspeth, came to me by mail at the War Department, inclosed in one from General Dix November 17th. I took them to President Lincoln, who looked at them, but I do not think he made any special remark; he seemed to attach very little importance to them. The President received a great many communications of a similar nature, but he seems to have attached more importance to these than any others, because I found them among his papers in an envelope marked, in his own hand-

writing, Assassination.

Cross-examined. The War Department received many foolish letters from anonymous correspondents and others; some of a threatening character, and others making extraordinary propositions.

Charles Dawson. Am clerk at the National Hotel, this city. Found a letter there addressed to J. W. B. The initials struck me as being peculiar, and I took it unopened to Judge Advocate Bingham, about 24 May.

(The letter was read:)

J. W. B.,
National Hotel,
Washington,
D. C.

South Branch Bridge, April 6, 1865.

Friend Wilkes: I received yours of March 12th, and reply as soon as practicable. I saw French, Brady, and others about the oil speculation. The subscription to the stocks amounts to \$8,000, and I add \$1,000 myself, which is about all I can stand. Now, when you sink your well go deep enough; don't fail, every thing depends on you and your helpers. If you can't get through on your trip, after you strike ile, strike through Thornton Gap, and cross by Capon, Rom-

ney's, and down the Branch, and I can keep you safe from all hardships for a year. I am clear of all surveillance, now that infernal Purdy is beat. -I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in the shade, but he suspects to (too) damn much now. Had he better be silenced for good? I send this up by Tom, and if he don't get drunk you will get it on the 9th; at all events, it can't be understood if lost. I can't half write. I have been drunk for two days. Don't write so much highfalutin next time. No more; only Jake will be at Green's with the funds. Burn this.

Truly yours,

LON.

Sue Guthrie sends much love.

The only guest at the National Hotel to whom the initials J. W. B. belonged was John Wilkes Booth.

Robert Purdy. The letter signed Lon I never saw until it was published in the public papers; have no knowledge by whom it was written; have heard of French, who is referred to in the letter, but I do not know of any one named Brady living on South Branch.

There is a man in that region named Lon; his full name is Leonidas McAleer, he generally goes by the name of Lon; have seen his handwriting. The writing of the letter resembles his. I am the Purdy referred to in the letter.

Captured a rebel spy a few miles from Lon's house; understood he was to meet Lon McAleer that day to carry information there. Lon McAleer had been playing both sides, loyal and disloyal; but as he had been lately bragging of his Unionism, I thought he would be glad to learn that the great rebel spy had been captured, so I rode down to him and told him. He cursed me for capturing the man, and said I should have taken his money and let him go.

Do not know any person of the name of Green in that neigh-

borhood; do not know the Sue Guthrie mentioned, but have ascertained that she is a lady who lived with Mr. French. McAleer told me French was his father-in-law.

Cross-examined by Mr. Aiken. Am acting for the Government as detective and scout; have been charged with writing that letter myself.

Samuel Knapp Chester. Am an actor; have known J. Wilkes Booth for years intimately. Last November met him in New York. He told me he did not intend to act here again; he had taken his wardrobe to Canada, and intended to run the blockade. His wardrobe was in Canada in charge of a friend named Martin in Montreal.

Met him on Broadway, as he was talking with some friends. They were joking with him about his oil speculations. After he left them, he told me he had a better speculation than that on hand, and one they wouldn't laugh at. Asked me how I would like to go in with him; told him I was without means. He said that didn't matter; he always liked me and would furnish the means. He then returned from Washington. I received several letters from him; told me he was speculating in farms in lower

Maryland and Virginia; that he was sure to coin money, and that I must go in with him.

In January he came to New York and called on me at my house; asked me to take a walk with him which I did. We went into a saloon known as the "House of Lords," on Houston Street, and remained there perhaps an hour, eating and drinking; afterward went to another saloon under the Revere House, after which we started up Broadway. He often mentioned his speculation, but would never mention what it was; he would say he would tell me by and by. When we got into the unfrequented portion of the street, he stopped and told me that he was in a large conspiracy to capture the heads of the Government, including the President, and to take them to Richmond; that was the speculation he wished me to go into; told him I could not do it; asked him to think of my family; said he had two or three thousand dollars that he could leave them. He urged the matter, but I still refused to give my assent. Then he said, You will at least not betray me; and added, You dare not. The party he said were sworn together, and if I attempted to betray them, I would be hunted down through life.

He told me that the affair was to take place at Ford's theater in Washington, and he wished me to open the back door of the theater at a signal. Said everything was in readiness, and that there were parties on the other side ready to co-operate with them. By these parties I understood him to mean the rebel authorities and others opposed to our Government; said there were

from fifty to one hundred persons engaged in the conspiracy.

In January he wrote saying I must come; told me his plan was sure to succeed. I wrote back that it was impossible. By return mail I got another letter, with fifty dollars enclosed, saying I must come; did not go. In February he called on me again; told me that he had been trying to get one John Matthews to join him, but when he told him what he wanted, he was frightened, and would not join; said he would not have cared if he had sacrificed him. Matthews was a coward, and was not fit to live; urged me again to join, and told me I must; said there was plenty of money in the affair, and that if I joined, I never would want for money again as long as I lived; said the President and some of the heads of the Government came to the theater very frequently during Mr. Forrest's engagements; desired him not to again mention the affair to me; said he would ruin me if I did not go.

When he found I would not go, he told me to make my mind easy, and he would trouble me no more. I returned him the money he had sent me; told me he would not allow me to do so, but that he was so very short of funds, and that either he or some other party must go to Richmond to obtain means to carry out their designs.

Friday, one week previous to the assassination, saw him again in New York, in the House of Lords, sitting at a table. He exclaimed, striking the table, What an excellent chance I had to kill the President if I had wished, on inauguration day! He said he

was as near the President on that day as he was to me.

Cross-examined. Booth spoke of the plot to capture the President, not to assassinate him, and to take him to Richmond. By the expression, other side, I understood him to mean across the lines—across the Potomac.

Booth did not say any thing as to the means for conducting the President after he should be seized; told me he was selling off his horses; that was after he told me he had given up this project of the capture. In February he said he had abandoned the idea of capturing the President and the heads of the Government. The affair, he said, had fallen through, owing to some parties backing out.

Joseph H. Simonds. Was acquainted with J. Wilkes Booth; was his business agent, particularly in the oil region. He owned interest in a lease on the Alleghany River, near Franklin. He never realized a dollar from any interest possessed in the oil region. His speculations were a total loss.

Robert Anson Campbell. Resided in Montreal, Canada; am teller of the Ontario Bank. Know Mr. Jacob Thompson well. His account with the Ontario Bank commenced May 30, 1864, and closed April 11, 1865. Prior to May 30 he left with us sterling exchange drawn on the rebel agents in Liverpool, for collection. The aggregate amount of the credits is \$649,873.28, and there is a balance still left to his credit of \$1,766.23; all the rest has been drawn out. Since about the first of March he has drawn out \$300,000 in sterling exchange and deposit receipts. On the 6th

of April last there is a deposit receipt for \$180,000.

Mr. Thompson has left Montreal since 14th April last. The account was opened with Jacob Thompson individually; the newspaper report was that he was financial agent of the Confederate States. He was not engaged in any business in Canada requiring large sums of money. He had other large money transactions in Canada. J. Wilkes Booth, the actor, had a small account at our bank. He has still left to his credit \$455.

(The bills of exchange found on Booth's body at the time of his capture were here exhibited to the witness.)

Those are the Ontario Bank bills of exchange that were sold to Booth, dated Oct. 27, 1864.

Daniel S. Eastwood, assistant manager of the bank, gave similar testimony and identified a draft sent by Thompson for \$25,000 to Benj. Wood of New York City and endorsed by him. Wood was at the time a member of Congress and proprietor of the New York News.

G. W. Bunker. Am a clerk at the National Hotel in this city. John Wilkes Booth stopped at that hotel when he came to the city. Booth was not there during October, 1864. He arrived in the evening of November 9, and was there in December or January and in February. He occupied room "231," in company with John T. H. Wentworth and John McCullough. Arrived again March 25; took tea, and left April 1; arrived April 8 and remained until the assassination of the President.

The only one of the accused I know is the one with the black

whiskers and imperial (pointing to the accused, Michael O'Laughlin). Do not know his name, but know him by sight. He frequently called on Booth at the hotel.

Lewis F. Bates. Reside in Charlotte, N. C.; am superin-

tendent of the Southern Express Company. Am a native of Massachusetts. On 19th April Jefferson Davis stopped at my house in Charlotte, when he made an address. While speaking, this telegram from John C. Breckinridge was handed him:

Greensboro, April 19, 1865.

His Excellency, President Davis:

President Lincoln was assassinated in the theater in Washington on the night of the 11th instant. Seward's house was entered on the same night, and he was repeatedly stabbed, and is probably mortally wounded.

John C. Breckinridge.

He read that dispatch aloud, and remarked if it were to be done, it were better it were well done. Am quite sure these are the words he used.

Later Jefferson Davis and John C. Breckinridge were at my house, when the assassination of the President was the subject of conversation. John C. Breckinridge remarked that he regretted it very much; that it was very unfortunate for the people of the South at that time. Davis replied, Well, General, I don't know, if it were to be done at all, it were better that it were well done; and if the same had been done to Andy Johnson, the beast, and to Secretary Stanton the job would then be complete.

Thought John C. Breckinridge simply regarded it as unfortunate for the people of the South at that time.

J. C. Courtney, telegraph operator at Charlotte, produced the telegram, and *James E. Russell*, *William L. Crane*, *Daniel H. Wilcox* and *Jules Soule* swore to the good reputation of Mr. Bates.

Rev. W. H. Ryder. Reside in Chicago. Went to Richmond, Va., on April 14 and visited the State Capitol, and found the archives of the so-called Confederate States scattered about the floor; and, in common with others, took as many of these as I chose. Among the papers was this letter:

Richmond, February 11, 1865.

His Excellency Jefferson Davis, Pres't C. S. A.

Sir: When Senator Johnson of Missouri and myself waited on you a few days since, in relation to the prospect of annoying and harassing the enemy by means of burning their shipping, towns, etc., there were several remarks made by you upon the subject that I was not fully prepared to answer, but which, upon subsequent conference with parties proposing the enterprise, I find can not apply as objections to the scheme.

1. The combustible material consists of several preparations and not one alone, and can be used without exposing the party using them to the least danger of detection whatever. The preparations

are not in the hands of McDaniel, but are in the hands of Professor McCullough, and are known but to him and one other party, as I understand.

2. There is no necessity for sending persons in the military service into the enemy's country; but the work may be done by agents, and, in most cases, by persons ignorant of the facts, and therefore innocent agents.

I have seen enough of the effects that can be produced to satisfy me that, in most cases, without any danger to the parties engaged, and in others but very slight, we can—1. Burn every vessel that leaves a foreign port for the United States. 2. We can burn every transport that leaves the harbor of New York or other Northern port, with supplies for the armies of the enemy in the South. 3. Burn every transport and gunboat on the Mississippi River, as well as devastate the country of the enemy, and fill his people with terror and consternation. I am not alone of this opinion, but many other gentlemen are as fully and thoroughly impressed with the conviction as I am. I believe we have the means at our command, if promptly appropriated and energetically applied, to demoralize the Northern people in a very short time. For the purpose of satisfying your mind upon the subject, I respectfully, but earnestly, request that you will have an interview with General Harris, formerly a member of Congress from Missouri, who, I think, is able, from conclusive proofs, to convince you that what I have suggested is perfectly feasible and practicable.

The deep interest I feel for the success of our cause in this struggle, and the conviction of the importance of availing ourselves of every element of defense, must be my excuse for writing you, and requesting you to invite General Harris to see you. If you should see proper to do so, please signify the time when it will be convenient for you to see him.

I am, respectfully, your obedient servant,

W. S. OLDHAM.

Indorsement.

Hon. W. S. Oldham. Richmond, February 12, 1865. In relation to plans and means for burning the enemy's shipping, towns, etc. Preparations are in the hands of Professor McCullough, and are known to only one other party. Asks the President to have an interview with General Harris, formerly a member of Congress from Missouri, on the subject.

Second Indorsement.

Secretary of State, at his convenience, please see General Harris, and learn what plan he has for overcoming the difficulty heretofore experienced.

20 Feb'y, '65.

J. D.

John Potts, and *Nathan Rice* proved the indorsement to be in the handwriting of *Jefferson Davis* and Gen. Alex T. Hamilton; the handwriting of Oldham, who at the time of the writ-

ing of the letter was a Senator from Texas in the Rebel Congress.

Joshua T. Owen. Professor McCullough was Professor of Chemistry at Princeton College and at Jefferson College, Pennsylvania, where I graduated about 1839 or 1840, he was Professor of Mathematics, and he was Assayer at the Mint, Philadelphia. He has been at Richmond during the rebellion, in the service of the Confederates. He had attained distinction as a chemist.

Edward Frazier. Am a steamboat man, making St. Louis my home for the last nine or ten years. During 1864 knew of the operations of Tucker, Minor Majors, Thomas L. Clark, and Colonel Barrett of Missouri, for burning boats carrying Government freight, transports and other vessels on the Mississippi, Ohio and other rivers. These men were in the service of the Confederate Government. I knew of the following steamboats having been burned by the operations of these parties: The Imperial, Hiawatha, the Robert Campbell, the Louisville, the Daniel G. Taylor and others, besides some in New Orleans. These boats were all owned by private individuals.

The operations of these men were to include Government hospitals, storehouses and everything appertaining to the army. A United States hospital at Louisville was burned by Dillingham in July of 1864. Was in Richmond August last; had an interview with the rebel Secretary of War, the Secretary of State and Mr. Jefferson Davis. Thomas L. Clark, Dillingham and

myself called there in connection with the boat burning, and put in claims to Mr. James A. Seddon, the rebel Secretary of War. Mr. Clark introduced me to Mr. Seddon. He told me that he had thrown up that business; that it was now in the hands of Mr. Benjamin. We went to him, and Mr. Benjamin looked at the papers we brought him. Mr. Benjamin told us three to call next day, when he said he had shown those papers to Jefferson Davis, and he (Benjamin) wanted to know if we would not take \$30,000 and sign receipts in full. We told him we would not. Mr. Benjamin then said if Dillingham was to claim this in Louisville, he wanted a statement of it. We went back to the hotel, and I wrote the statement myself, that Mr. Dillingham had been hired by General Polk, and that he had been sent to Louisville expressly to burn the hospital. We made a settlement with him for \$50,000; \$35,000 down in gold, and \$15,000 on deposit, to be paid in four months, provided the claims proved correct.

Mr. Benjamin talked about the Long Bridge, between Nashville and Chattanooga. Mr. Benjamin remarked that he would give \$400,000 if that bridge was destroyed, and asked me if I would take charge of it. Told Mr. Davis that I did not think it was any use burning steamboats, and he said no, he was going to have that stopped.

Asked Mr. Davis if it would make any difference where the work of destroying bridges was done. He said it did not; it might be done in Illinois or any place; that we might destroy railroad bridges, commissary and

quartermaster stores—anything appertaining to the army, but as near Sherman's base as possible; that Sherman was the man who was doing more harm than anybody else at that time.

Brig.-Gen. E. D. Townsend.
Was well acquainted with G. J. Rains, who resigned as Lieutenant-Colonel of the Fifth Regi-

ment of United States Infantry in 1861. He has, I understand, since then been Brigadier-General in the rebel service. Am acquainted with his handwriting; the signature to the indorsement now shown to me is in his handwriting.

(The following letter, with indorsement, was then read:)

Richmond, December 16, 1864.

Capt. Z. McDaniel, Com'ding Torpedo Co.:

Captain: I have the honor to report that, in obedience to your order, and with the means and equipment furnished me by you, I left this city 26th July last, for the line of the James River, to operate with the "Hozological Torpedo" against the enemy's vessels navigating that river. I had with me Mr. R. K. Dillard, who was well acquainted with the localities, and whose services I engaged for the expedition. On arriving in Isle of Wight County on the 2nd of August, we learned of immense supplies of stores being landed at City Point; and, for the purpose, by stratagem, of introducing our machine upon the vessels there discharging stores, started for that point. We reached there before daybreak, on the 9th of August last, with a small amount of provisions, having traveled mostly by night, and crawled upon our knees to pass the east picket line. Requesting my companion to remain behind about half a mile, I approached cautiously the wharf, with my machine and powder covered by a small box. Finding the Captain had come ashore from a barge then at the wharf, I seized the occasion to hurry forward with my box. Being halted by one of the wharf sentinels, I succeeded in passing him by representing that the Captain had ordered me to convey the box on board. Hailing a man from the barge, I put the machine in motion, and gave it in his charge. He carried it aboard. The magazine contained about twelve pounds of powder. Rejoining my companion, we retired to a safe distance to witness the effect of our effort. In about an hour the explosion occurred. Its effect was communicated to another barge beyond the one operated upon, and also to a large wharf building containing their stores (enemy's), which was totally destroyed. The scene was terrific, and the effect deafened my companion to an extent from which he has not recovered. My own person was severely shocked, but I am thankful to Providence that we have both escaped without lasting injury. We obtained and refer you to the inclosed slips from the enemy's newspapers, which afford their testimony of the terrible effects of this blow. The enemy estimate the loss of life at fifty-eight and one hundred and twenty-six wounded, but we have reason to believe it greatly exceeded that.

The pecuniary damage we heard estimated at four millions of dollars; but of course we can give you no account of the extent of it

exactly. I may be permitted, Captain, here to remark that, in the enemy's statement, a party of ladies, it seems, were killed by this explosion. It is saddening to me to realize the fact that the terrible effects of war induce such consequences; but when I remember the ordeal to which our own women have been submitted, and the barbarities of the enemy's crusade against us and them, my feelings are relieved by the reflection that while this catastrophe was not intended by us, it amounts only, in the providence of God, to just retaliation.

This being accomplished, we returned to the objects of our original expedition. We learned that a vessel (the *Jane Duffield*) was in Warwick River, and, with the assistance of Acting-Master W. H. Hinds, of the Confederate States navy, joined a volunteer party to capture her. She was boarded on the 17th September last, and taken without resistance. We did not destroy her, because of the effect it might have had on the neighboring citizens and our own further operations. At the instance of the Captain she was bonded, he offering as a hostage, in the nature of security to the bond, one of his crew, who is now held as a prisoner of war on this condition in this city.

In the meanwhile we operated on the James, as the weather and moon co-operated, but without other success than the fear with which the enemy advanced, and the consequent retarding of his movements on the river. We neared success on several occasions. Finding our plan of operations discovered by the enemy, and our persons made known and pursued by troops landed from their boats at Smithfield, we deemed it best to suspend operations in that quarter and return to report to you, officially, our labors. Your orders were to remain in the enemy's lines as long as we could do so; but I trust this conduct will meet your approval. The material unused has been safely concealed. I have thus, Captain, presented you in detail the operations conducted under your orders and the auspices of your company, and await further orders.

Very respectfully, your obedient servant,

JOHN MAXWELL.

For Hon. Secretary of War:

Present.

John Cantlin. Reside at Sel-

ma, Alabama; was foreman of the Selma Dispatch in December last.

"One Million Dollars Wanted to Have Peace by the 1st of March. —If the citizens of the Southern Confederacy will furnish me with the cash, or good securities for the sum of one million dollars I will cause the lives of Abraham Lincoln, Wm. H. Seward and Andrew Johnson to be taken by the 1st of March next. This will give us peace, and satisfy the world that cruel tyrants can not live in a land of liberty. If this is not accomplished, nothing will be claimed beyond the sum of fifty thousand dollars in advance, which is supposed to be necessary to reach and slaughter the three villains.

"I will give, myself, one thousand dollars toward this patriotic purpose. Every one wishing to contribute will address Box X, Cahawba, Alabama.

"December 1, 1864."

That advertisement was published in the Selma Dispatch at the date named. The manuscript passed through my hands, and was in the handwriting of Mr. G. W. Gayle, of Cahawba, Ala. His signature was on the manuscript, to indicate that he was the author and was responsible for it. Am familiar with his handwriting.

Mr. Gayle is a lawyer of reputation, with extreme views on the subject of slavery and the rebellion, and an ardent supporter of the Confederacy.

W. D. Graves. I was engaged in the office of the Selma Dispatch in December last, and remember seeing an advertisement

to have peace by the 1st of March, saw the manuscript from which it was set up. It was in the handwriting of Colonel G. W. Gayle; am well acquainted with it, having seen it frequently in articles we had published before.

Frederick H. Hall. Have opened certain of the boxes delivered to Major Eckert, containing the archives of the so-called Confederate States. From the box marked "Adjutant and Inspector-General's Office; Letters received July to December, 1864," I took this letter.

(The following letter was then read in evidence:)

Montgomery, White Sulphur Springs, Va.

To His Excellency the President of the Confederate States of America:

Dear Sir: I have been thinking some time that I would make this communication to you, but have been deterred from doing so on account of ill health. I now offer you my services, and if you will favor me in my designs, I will proceed, as soon as my health will permit, to rid my country of some of her deadliest enemies, by striking at the very heart's blood of those who seek to enchain her in slavery. I consider nothing dishonorable having such a tendency. All I ask of you is to favor me by granting me the necessary papers, etc., to travel on while within the jurisdiction of the Confederate Government. I am perfectly familiar with the North, and feel confident that I can execute any thing I undertake. I am just returned now from within their lines. I am a lieutenant in General Duke's command, and I was on the raid last June in Kentucky under General John H. Morgan. I and all of my command, excepting about three or four, and two commissioned officers, were taken prisoners; but finding a good opportunity, while being taken to prison, I made my escape from them. Dressing myself in the garb of a citizen, I attempted to pass out through the mountain, but finding that impossible, narrowly escaping two or three times from being retaken, I shaped my course north and went through to the Canadas, from whence, by the assistance of Colonel J. P. Holcombe,

I succeeded in making my way around and through the blockade; but having taken the yellow fever, etc., at Bermuda, I have been rendered unfit for service since my arrival.

I was reared up in the State of Alabama, and educated at its university. Both the Secretary of War and his assistant, Judge Campbell, are personally acquainted with my father, William J. Alston, of the Fifth Congressional District of Alabama, having served in the time of the old Congress, in the years 1849-50-51.

If I do any thing for you, I shall expect your full confidence in return. If you do this, I can render you and my country very important service. Let me hear from you soon. I am anxious to be doing something, and having no command at present, all, or nearly all, being in garrison, I desire that you favor me in this a short time. I would like to have a personal interview with you, in order to perfect the arrangements before starting.

I am very respectfully, your obedient servant,

Lieut. W. Alston.

Indorsements.

A, 1,390. Lieutenant W. Alston, Montgomery, Sulphur Springs, Va. (No date.)

Is lieutenant in General Duke's command. Accompanied raid into Kentucky and was captured, but escaped into Canada, from whence he found his way back. Been in bad health. Now offers his services to rid the country of some of its deadliest enemies. Asks for papers to permit him to travel within the jurisdiction of this Government. Would like to have an interview and explain.

Respectfully referred, by direction of the President, to the Honorable Secretary of War.

Burton W. Harrison,
Private Secretary.

George F. Edmunds. Reside at Burlington, Vt., and am counselor at law. At the recent trial of the St. Albans raiders that took place in Canada, I appeared as counsel for the United States.

I became acquainted with Jacob Thompson, William C. Cleary, Clement C. Clay, George N. Sanders, and others of that clique. They assumed to be offi-

cers of the Confederate Government in defending these raiders. Mr. Cleary was examined as a witness on the part of defendants; he represented that the persons engaged in this raid were acting under the authority of the Confederate Government.

The original of this paper was given in evidence at the trial.

Confederate States of America,
War Department,
Richmond, Va., June 16, 1864.

To Lieutenant Bennett H. Young:

Lieutenant: You have been appointed temporarily first lieutenant in the provisional army for special service.

You will proceed, without delay, to the British Provinces, where you will report to Messrs. Thompson and Clay for instructions.

You will, under their direction, collect together such Confederate soldiers who have escaped from the enemy, not exceeding twenty in number, as you may deem suitable for the purpose, and will execute such enterprises as may be intrusted to you. You will take care to commit no violation of the local law, and to obey implicitly their instructions. You and your men will receive from these gentlemen transportation, and the customary rations and clothing, or the commutation therefor.

James A. Seddon,

Va., June 16.

Secretary of War.

Bennett H. Young, who was on trial, produced that document as his authority for the acts he did at St. Albans.

Henry G. Edson. Reside at St. Albans, Vt., and am attorney and counselor at law; was in Canada during the judicial investigations of the St. Albans raid, acting as counsel in behalf of the bank and the United States; saw George N. Sanders, Jacob Thompson, Clement C. Clay, and others of that

circle of rebels. They all claimed to be agents of the Confederate Government.

Colonel Martin Burke. Knew Robert C. Kennedy, who was hanged in New York in March last; had charge of him and had him hung. This is a confession made by him in my presence, a day or so before his execution.

(The following paper was then read:)

CONFESSION OF ROBERT C. KENNEDY.

After my escape from Johnson's Island, I went to Canada, where I met a number of Confederates. They asked me if I was willing to go on an expedition. I replied, "Yes, if it is in the service of my country." They said, "It is all right," but gave no intimation of its nature, nor did I ask for any. I was then sent to New York, where I stayed some time. There were eight men in our party, of whom two fled to Canada. After we had been in New York three weeks, we were told that the object of the expedition was to retaliate on the North for the atrocities in the Shenandoah Valley. It was designed to set fire to the city on the night of the Presidential election; but the phosphorus was not ready, and it was put off until the 25th of November. I was stopping at the Belmont House, but moved into Prince Street. I set fire to four places—in Barnum's Museum, Lovejoy's Hotel, Tammany Hotel, and the New England House. The others only started fires in the house where each was lodging, and then ran off. Had they all done as I did, we would have had thirty-two fires, and played a huge joke on the fire department. I know that I am to be hung for setting fire to Barnum's Museum, but that was only a joke. I had no idea of doing it. I had been drinking, and went in there with a friend, and, just to scare the people, I emptied a bottle of phosphorus on the floor. We knew it wouldn't set fire to the wood, for we had tried it before, and at one time concluded to give the whole thing up.

There was no fiendishness about it. After setting fire to my four

places, I walked the streets all night, and went to the Exchange Hotel early in the morning. We all met there that morning and the next night. My friend and I had rooms there, but we sat in the office nearly all the time, reading the papers, while we were watched by the detectives, of whom the hotel was full. I expected to die then, and if I had, it would have been all right; but now it seems rather hard. I escaped to Canada, and was glad enough when I crossed the bridge in safety.

I desired, however, to return to my command, and started with my friend for the Confederacy, via Detroit. Just before entering the city, he received an intimation that the detectives were on the lookout for us, and, giving me a signal, he jumped from the cars. I didn't notice the signal, but kept on, and was arrested in the depot.

I wish to say that killing women and children was the last thing thought of. We wanted to let the people of the North understand that there were two sides to this war, and that they can't be rolling in wealth and comfort, while we at the South are bearing all the hardships and privations.

In retaliation for Sheridan's atrocities in the Shenandoah Valley, we desired to destroy property, not the lives of women and children, although that would, of course, have followed in its train.

Done in the presence of

Lieut-Col. Martin Burke and J. Howard, Jr.

March 24, 10:30 p. m.

Godfrey Joseph Hyams. Am a native of London, England, but have lived South nine or ten years. During the past year, I have resided in Toronto, Canada. About the middle of December, 1863, made the acquaintance of Dr. Blackburn; was introduced to him by the Rev. Stewart Robinson, at the Queen's Hotel, in Toronto; knew that he was a Confederate and was working for the rebellion.

He asked me if I wanted to go South and serve the Confederacy. I said, yes. He took me to a private room; he said he wanted to confide to me an expedition. I would make an independent fortune by it, at least \$100,000, and get more honor and glory to my name than General Lee, and be of more assistance to the Confederate Government, than if I was to take one hundred thou-

sand soldiers to reinforce General Lee; pledged my word if I could do any good. He told me he wanted me to take a certain quantity of clothing, consisting of shirts, coats, and underclothing into the States, and dispose of them by auction. I was to take them to Washington City, to Norfolk, and as far South as I could possibly go, where the Federal Government held possession and had the most troops, and to sell them on a hot day or of a night; it did not matter what money I got for the clothes; I had just to dispose of them in the best market, where there were most troops, and where they would be most effective, and then come away.

Told me I should have \$100,000 for my services; \$60,000 of it directly after I returned to Toronto; but that would not be a

circumstance to what I should get. He said I might make ten times \$100,000; told me to keep quiet, and if I moved anywhere to inform Dr. Stuart Robinson. On 8th day of June, 1864, had a letter given me from Dr. Blackburn, which Dr. Stuart Robinson gave me. Asked him what I was to do about it; he said he did not know any thing at all about it; that he did not want to furnish any means to commit an overt act against the United States; advised me to borrow from Mr. Preston, who keeps a tobacco manufactory in Toronto, enough money to take me to Montreal, which I did; went to Montreal, and there got money from Mr. Slaughter, according to the directions contained in the letter. The letter instructed me to proceed from Montreal to Halifax to meet Dr. Blackburn; it was dated "Havana, May 10, 1864;" went to Halifax, to a gentleman by the name of Alexander H. Keith, Jr., and remained under his care until Dr. Blackburn arrived in the steamer 12th July, 1864. When Dr. Blackburn arrived, he told me that the goods were on board the steamer *Alphia*, they had been smuggled in from Bermuda to Cunard's steamboat wharf; I went and got eight trunks and a valise. I was directed to take them to my hotel, and put them in a private room.

Went to Dr. Blackburn and told him I had got the goods off the steamer. He told me that the five trunks tied up with ropes were the ones for me to take, and asked me to take the valise into the States, and send it by express, with an accompanying letter, as a donation to President Lincoln; refused; took three of

the trunks and the valise around to his hotel. Got the trunks to Philadelphia by boat; then took out the goods, which were very much rumpled, smoothed them out, and arranged them, bought some new trunks, and repacked them, and brought them to this city.

Dr. Blackburn asked me before leaving if I had had the yellow fever; and on my saying No, he said, You must have a preventive against catching it. You must get some camphor and chew it, and get some strong cigars, the strongest you can get, and be sure to keep gloves on when handling the things. He gave me some cigars he said he had brought from Havana, which he said were strong enough for any thing; I turned over five of the trunks to Messrs. W. L. Wall & Co., commission merchants in this city, and four to a man by the name of Myers from Boston, a sutler in Sigel's or Weitzel's division, to sell.

Dr. Blackburn said his object in having these goods disposed of in different cities, was to destroy the armies or anybody that they came in contact with. All these goods had been carefully infected in Bermuda with yellow fever, small-pox and other contagious diseases. The goods in the valise, which were intended for President Lincoln, he said had been infected both with yellow fever and small-pox. This valise I declined taking charge of, and turned it over to him at the Halifax Hotel. I afterward heard that it had been sent to the President.

On disposing of the trunks I left Washington for Hamilton, Canada. I met Mr. Holcombe

and Mr. Clement C. Clay. They congratulated me upon my safe return, and upon my making a fortune. They told me I should be a gentleman for the future, instead of a working man and a mechanic. They seemed to understand the business in which I had been engaged. Mr. Holcombe told me that Dr. Blackburn was at the Donegana Hotel in Montreal, and that I had better telegraph to him that I had returned. I did so; and the next night Dr. Blackburn came up and knocked at the door of my house. I was in bed at the time; looked out of the window and saw Dr. Blackburn there. Said he, Come down, Hyams, and open the door; you're like all damned rascals who have been doing something wrong—you're afraid the devil is after you. He was in company with Bennett H. Young. I came down and let him in. He asked me how I had disposed of the goods, and I told him. Well, said he, that is all right as long as big No. 2 went into Washington; it will kill them at sixty yards' distance; told the Doctor I needed some funds. Colonel Jacob Thompson gave me \$50 the next day.

Told Jacob Thompson of the large sum which Dr. Blackburn had promised me; he would not pay me any thing more. Went to Montreal with a commission for Bennett H. Young, to be used in his defense in the St. Albans raid case; met Dr. Blackburn. He said I had written some hard letters to him, abusing him, and that he had no money to give me. Never gave me any more satisfaction.

W. L. Wall. Am an auction and commission merchant in this

city. In August last, a person named Harris called at my store, and told my bookkeeper that he had some shirts that he wanted to sell at auction, and asked him if he would sell them the next morning. The clerk told him he would. Harris then asked for an advance of \$100. The money was given him, and the shirts were sold the next morning.

Salome Marsh. Am a Lieutenant-Colonel. While Major, I was a prisoner of war, confined at Libby Prison, from June, 1863, to March, 1864. The rations we received there when I first arrived were small, but such as they gave us at first were tolerably fair. There was about one loaf of bread allowed to two men—half a loaf per man—and, I judge, about four ounces of meat and about three spoonfuls of rice. After about four months, the meat was stopped, and we only received it occasionally. Then they took the bread from us, and gave us instead what they called corn-bread, but it was of a very coarse character; have known the officers there to be without meat for two or three weeks at a time, and receive nothing but the miserable corn-bread. Occasionally they would distribute some few potatoes, but of the very worst character, rotten, etc., such as the men could hardly eat. We appealed to General Ould, the rebel Commissioner of Exchange. He sent a written reply, stating that our treatment was good enough, better than their prisoners were receiving in our prisons, at Fort Delaware and other places.

After five months was taken sick with the dropsy for the want of proper nourishment,

proper diet, etc., and was sent to the hospital. I remained there some few weeks. I saw some enlisted men brought in from Belle Isle; am satisfied from their appearance that they were in a starving condition. Out of forty from eight to twelve died the first night.

The men that were brought to

the hospital while I was there were in an emaciated condition, and their whole appearance indicated that they were suffering for want of food, and were in a state of starvation.

The prisoners brought to the hospital died simply of neglect, and the want of proper food—of starvation.

Capt. Fred Memmert confirmed the previous witness as to Libby Prison, *Serj. Benj. Sweerer* gave similar evidence as to the prison at Belle Island, and *William Ball*, *Charles Sweeney* and *Lieut. J. L. Ripple* testified as to conditions at Andersonville.³⁵

Lieutenant Reuben Bartley. I was confined in Libby Prison from March to July, 1864.

On being taken to Libby, we were informed that the place had been mined; next morning we were taken into a dungeon in the cellar part of the building. We were told it was the place where a torpedo had been placed. They told us that the prison had been mined on account of Colonel Dahlgren's raid, and that if we succeeded in getting into the city, they would blow up the prisoners rather than liberate them.

Erastus W. Ross. Was in the service of the rebel Government detailed as a clerk at Libby Prison.

In March, 1864, General Kilpatrick was making a raid in the direction of Richmond. About that time the prison was mined. Major Turner, the commandant

of the prison, had charge of the fuse. He told me that the powder was there, and that the fuse was to set it off; that it was put there for the security of the prisoners, and if the army got in, it was to be set off for the purpose of blowing up the prison and the prisoners. Major Turner said he was acting under the authority of the rebel War Department, though I never saw any written orders about it.

John LaTouche. Was First Lieutenant Twenty-fifth Virginia and in March, 1864, on duty at Libby Prison. Major Turner, the keeper of the prison, told me that General Winder had been to see the Secretary of War, and that they were going to put powder under the prison. In the evening of the same day, the powder was brought.

THE TESTIMONY FOR THE GOVERNMENT RELATING TO JOHN WILKES BOOTH, THE ASSASSINATION, AND PURSUIT OF THE ASSASSIN.

Robert R. Jones. Am clerk at the Kirkwood House in this city. The register contains the name of G. A. Atzerodt, Charles County;

Atzerodt took room No. 126 on the morning of 14th April last before 8 o'clock in the morning; recognize Atzerodt among

³⁵ See also Trial of Wirz, *post*, p. 657.

the accused. That is the man. Went to the room occupied by Atzerodt after it had been opened by Mr. Lee, on the night of 15th of April, and saw all the articles that were found there; cannot identify the knife, though it was similar to the one just shown me. It was between the sheet and the mattress. The bed had not been occupied on the night of the 14th, nor had the chambermaid been able to get into the room the next day. Atzerodt paid one day in advance. I had never seen him in the hotel before.

William A. Browning. Am private secretary of President Johnson. Between 4 and 5 o'clock 14th of April, I left the Vice-President's room in the Capitol, and went to the Kirkwood House, where we both boarded. Noticed a card in my box, which was adjoining that of Mr. Johnson's, and Mr. Jones, the clerk, handed it to me. It was a common mistake to put cards intended for me into the Vice-President's box, and his would find their way into mine; the boxes being together.

I recognize this as the card found in my box. The following is written upon it in pencil:

Don't wish to disturb you; are you at home?

J. Wilkes Booth.

Had known J. Wilkes Booth when he was playing in Nashville, Tenn.

Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride, also my leggings and gloves, and oblige,

Feb. 22, 1865.

This note was sent to the stable by Mrs. Surratt, and I put it on

Cross-examined. The Vice-President was at the Capitol the greater part of the forenoon of that day. He was at dinner at the Kirkwood at 5; do not think he was out afterward. He was in his room the rest of the evening.

Thomas L. Gardiner. Saw at the Government stables in this city, a dark-bay one-eyed horse. It is the horse that was sold the latter part of November, by my uncle, George Gardiner, to a man named Booth. Booth came to my uncle's with Dr. Samuel A. Mudd, and Booth selected this one out of three horses my uncle had for sale. I delivered it to him the next morning at Bryantown.

Cross-examined. My uncle's house is but a short distance from Dr. Mudd's. Booth said he wanted a horse to run in a light buggy to travel over the lower counties of Maryland, that he might look at the lands, as he desired to buy some.

Brooke Stabler. Am manager at Howard's livery stable; was acquainted with J. Wilkes Booth, John H. Surratt, and George A. Atzerodt. They were frequently at the stable together; they almost always came together, and were sometimes there three or four times a day. Mr. Surratt kept two horses at the stable, and Atzerodt rode out occasionally with Surratt.

Have in my hand a note from Mr. Surratt, which reads:

Yours, etc.,

J. H. Surratt.

file. Atzerodt several times rode horses from that order.

On 31st March, Atzerodt took away from the stable a horse blind of one eye, a fine racking horse, and another smaller bay horse, under an order from John H. Surratt. Surratt claimed the horses, but Booth paid for their keep. The horse now at the Government stable is the same one-eyed bay horse that Atzerodt took away on 31st March, and brought back for sale some days afterward.

William E. Cleaver. Keep a livery stable on Sixth Street, in this city. In January J. Wilkes Booth kept a one-eyed bay horse at my stable for about a month. On 30th of January he sold the horse to the prisoner, Samuel Arnold, so Booth told me; have seen Atzerodt at our stable once; he was there with horses for sale; the one-eyed horse now at the Government stables is the same Arnold bought of Booth.

James W. Pumphry. Reside in Washington City, and keep a livery stable; was acquainted with J. Wilkes Booth. He came to my stable about noon 14th April and engaged a saddle-horse which he said he wanted about 4 that day. A small bay mare, about fourteen or fourteen and a half hands high, with black legs, black mane and tail, and a white star in the forehead; think the off front foot had white spots; have never seen the mare since. He asked me to give him a tie-rein to hitch the horse; told him not to hitch her, as she was in the habit of breaking the bridle; told me he wanted to tie her while he stopped at a restaurant and got a drink. He then rode off, and I have never seen Booth since.

About six weeks before the

assassination, Booth called at my stable, in company with John H. Surratt. He said he wanted a good saddle-horse.

Cross-examined. Mr. Surratt never came to my place with Booth after the first time; do not know any of the prisoners at the bar.

Peter Taltavul. Keep the restaurant adjoining Ford's theater. Booth came into my restaurant on the evening of 14th April, a little after 10, walked up to the bar, and called for some whisky, which I gave him; he placed the money on the counter and went out from eight to ten minutes before I heard the cry that the President was assassinated.

Am acquainted with prisoner, Herold; have known him since he was a boy; saw him on the night of the murder, or the night previous to that; he came into my place and asked me if Mr. Booth had been there that afternoon; told him I had not been there myself in the afternoon, when he asked, Was he not here this evening? I said, No, sir; and he went out.

Cross-examined. Cannot positively swear as to whether that was Thursday or Friday evening. I think Herold came alone to the bar; did not see anybody come in there with him.

Sergeant Joseph M. Dye. On the evening 14th April was sitting in front of Ford's theater, about half-past 9 o'clock; observed several persons, whose appearance excited my suspicion, conferring together upon the pavement. The first who appeared was an elegantly dressed gentleman, who came out of the passage, and commenced conversing

with a ruffianly-looking fellow; then another appeared, and the three conversed together. It was then drawing near the second act. The one that appeared to be the leader, the well-dressed one, said, I think he will come out now, referring to the President, I supposed. The President's carriage was standing in front of the theater. One of the three had been standing out, looking at the carriage, on the curbstone, while I was sitting there, and then went back. They watched awhile, and the rush came down; many gentlemen came out and went in and had a drink in the saloon below. After the people went up, the best-dressed gentleman stepped into the saloon himself; remained there long enough to get a drink, and came out in a style as if he was becoming intoxicated. He stepped up and whispered to this ruffian (that is, the miserable-looking one of the three), and went into the passage that leads to the stage from the street. Then the smallest one stepped up, looked at the clock in the vestibule, called the time, just as the best-dressed gentleman appeared again. Then he started up the street, remained there awhile, and came down again, and called the time again. I began to think there was something going on, and looked toward this man as he called the time. Presently he went up again, and then came down and called the time louder; think it was 10 minutes after 10 that he called out the last time, and then started on a fast walk up the street, and the best dressed one went inside the theater.

Was invited by Sergeant Cooper to have some oysters; we barely got seated in the saloon

when a man came rushing in and said the President was shot.

(Photograph of J. Wilkes Booth handed to witness.)

That was the well-dressed man; but his moustache was heavier and his hair longer than in the photograph, but these are his features exactly.

The ruffianly man was a stout man, with a rough face, and had a bloated appearance; his dress had been worn a considerable time. The prisoner, Edward Spangler, has the appearance of the rough-looking man, except that he had a moustache.

The one that called the time was a very neat gentleman, well dressed, and he had a moustache; do not see him among the prisoners. He was better dressed than any I see here.

John E. Buckingham. Am night doorkeeper at Ford's theater; know John Wilkes Booth. About 10 o'clock the evening 14th he came to the theater, walked in and went out again, and returned in two or three minutes; asked me what time it was; told him to step into the lobby and he could see. He stepped out and walked in again, entering by the door that leads to the parquette and dress-circle, came out again, and then went up the stairway to the dress-circle. The last I saw of him was when he alighted on the stage from the box, and ran across the stage with a knife in his hand. He was uttering some sentence I could not understand.

Cross-examined. Know the accused, Spangler; am satisfied he was not in front of the theater during the play on the night of 14th April; had he come out must have seen him; have never

known Spangler wear a moustache.

John F. Sleichmann. Am assistant property man at Ford's theater, and have to set the furniture, etc., on the stage; was at the theater on the night of the assassination of the President. About 9 o'clock saw John Wilkes Booth. He came up on a horse, and entered by the little back door to the theater. Ned Spangler was standing by one of the wings, and Booth said to him, Ned, you'll help me all you can, won't you? and Ned said, O yes; just got a glimpse of Booth after the President was shot, as he was going out at the first entrance on the right-hand side near the prompter's place; saw Booth on the afternoon of 14th, between 4 and 5 in the restaurant next door; went in to look for James Maddox, and I saw Booth, Ned Spangler, Jim Maddox, Peanuts, and a young gentleman by the name of John Mouldey, drinking there.

Cross-examined. Booth spoke to Spangler right by the back door; saw his horse through the open door, but as it was dark I could not see if any one was holding it.

Was on the stage that night, except when I had to go down to the apothecary's store to get a few articles to use in the piece, and when I went into the restaurant next door. Spangler's business on the stage is shoving the scenes; went to the front of the theater by the side entrance, on the left-hand side. I noticed the President's carriage there, but did not see Spangler; had he been there, I guess I should have seen him; have never seen Spangler wear a moustache.

About ten minutes, I suppose, after the assassination, Spangler was standing on the stage by one of the wings, with a white handkerchief in his hand. He was very pale, and was wiping his eyes.

Booth was very familiar with the actors and employees of the theater, and was backward and forward in the theater frequently. He had access to the theater at all times, and came behind the scenes, and in the green-room, and anywhere about the theater, just as though he was in the employment of Mr. Ford.

When Booth spoke to Spangler they were about eight feet from me, but Booth and Spangler were not more than two or three feet apart. After Booth had spoken, he went behind the scenes; do not know whether Booth saw me, but he could have seen me from where he was standing; no one else was by at the time that I noticed. Spangler is a drinking man; whether he was in liquor that night I do not know.

Joseph Burroughs, alias "Peanuts." Carry bills for Ford's theater during the daytime, and stand at the stage door at night; knew John Wilkes Booth, and used to attend to his horse, and see that it was fed and cleaned. His stable was back of the theater. On the afternoon of 14th of April, he brought his horse to the stable, between 5 and 6. He hallooed out for Spangler; when he came, Booth asked him for a halter. He had none, and sent Jake up stairs after one. Between 9 and 10 that night, heard Deboney calling to Ned that Booth wanted him out in the alley; did not see Booth come up the alley on his horse, but I saw

the horse at the door when Spangler called me out there to hold it. When Spangler told me to hold the horse, I said I could not; I had to go in to attend to my door. He told me to hold it, and if there was anything wrong to lay the blame on him; so I held the horse; held him as I was sitting over against the house there, on a carpenter's bench.

Heard the report of the pistol. When Booth came out he told me to give him his horse. He struck me with the butt of a knife, and knocked me down. He did this as he was mounting his horse, with one foot in the stirrup; he also kicked me, and rode off immediately.

Was in the President's box that afternoon when Harry Ford was putting the flags around it. Harry Ford told me to go up with Spangler and take out the partition of the box; that the President and General Grant were coming there. While Spangler was removing it he said, Damn the President and General Grant. I said, What are you damning the man for—a man that has never done any harm to you? He said he ought to be cursed when he got so many men killed. Did not see Spangler come in or go out while I was sitting at the door.

Cross-examined. When I was not there, Spangler used to hitch up Booth's horse, and hold him or feed him.

I did not see Booth in front of the theater that night, nor Spangler; never saw Spangler wear a moustache.

Mary Ann Turner (colored). Reside in the rear of Ford's theater; my front door fronts to the back; knew John Wilkes

Booth; saw him on the afternoon of 14th, standing in the back-door of Ford's theater, with a lady. Between 7 and 8 o'clock that night, he brought a horse up to the back door of the theater, and, opening it, called Ned, three times.

Ned came to him, and I heard him say, in a low voice, Tell Maddox to come here. When Maddox came, Booth said something in a very low voice to him, and I saw Maddox reach out his hand and take the horse. Where Ned went, I cannot tell. Booth then went into the theater. After the assassination, heard the horse going very rapidly out of the alley. Ran immediately to my door, but he was gone. The crowd then came out, and this man, Ned Spangler, came out of the theater.

Mary Jane Anderson (colored). Live right back of Ford's theater, adjoining Mrs. Turner's house; knew John Wilkes Booth by sight; saw him on the morning of 14th April down by the stable, and again between 2 and 3, standing in the theater back-door, in the alley, talking to a lady.

I looked out of the window, and saw Booth leading a horse down the alley. He pushed the door open, and in a loud voice he called Ned four times. There was a colored man up at the window who said, Mr. Ned, Mr. Booth wants you. This is the way I came to know it was Mr. Booth, for it was dark and I could not see his face. When Ned came, Mr. Booth said, in a low voice, Tell Maddox to come here.

Then Ned went back and Maddox came out, and took off the horse from before my door,

round to where the work bench was, that stood at the right side of the house. They both then went into the theater. The horse stood out there a considerable time, and kept up a great stamping. The person who held the horse kept walking backward and forward; suppose the horse was there an hour and a half altogether. Then saw Booth come out of the door with something in his hand, glittering. So quick that it seemed as if he but touched the horse and it was gone like a flash of lightning; thought to myself that the horse must surely have run off with the gentleman. Presently there was a rush out of the door, and I heard the people saying, Which way did he go? Asked a gentleman what was the matter, and he said the President was shot. I asked who shot him. Said he, The man who went out on the horse.

Went up to the theater door, and saw Mr. Spangler. When he came out, I said to him, Mr. Spangler, that gentleman called you. Said he, No, he didn't. Said I, Yes, he did. He said, No, he didn't call me. He denied it and I kept on saying so.

James L. Maddox. Was employed at Ford's theater as property man. In December last, rented from Mrs. Davis, for John Wilkes Booth, the stable where he kept his horse up to the time of the murder of President Lincoln. Mr. Booth gave me the rent money monthly, and I paid it to Mrs. Davis.

Saw Harry Ford decorating the President's box on the afternoon of the 14th; do not remember seeing any one else in the box.

Saw Joe Simms, the colored man, coming from Mr. Ford's room, through the alley way, carrying on his head the rocking chair that the President was to use in the evening; had not seen that chair in the box this season.

Cross-examined. My business is to see that the furniture is put on the stage aright, and to get the actors any side properties that may be required for use in the play.

The passage way by which Booth escaped is usually clear.

Spangler's position on the stage was on the left-hand side, facing the audience, and the same side that the President's box was on; saw Spangler during nearly every scene. If he had not been at his place, should certainly have missed him. Was at the front of the theater during the second act, but did not see Spangler there; have never seen Spangler wear a moustache; was in the first entrance to the stage, the side the President's box is on, at the moment of the assassination. Three or four minutes before that, while the second scene of the third act was on, I crossed the stage with the will, and saw Spangler in his place. After the pistol was fired, caught a glimpse of Booth, when he was about two feet off the stage; ran on the stage and heard a call for water; brought a pitcher full, and gave it to one of the officers; did not see Spangler after that until the next morning; may have seen him, but not to notice him.

Heard about 12 o'clock that the President was coming to the theater that night; was told so by Mr. Harry Ford.

James P. Ferguson. Keep a

restaurant, adjoining Ford's theater, on the upper side. Saw J. Wilkes Booth, on the 14th, between 2 and 4, standing by the side of his horse—a small bay mare; Mr. Maddox was standing by him talking. Booth remarked, See what a nice horse I have got; now watch, he can run just like a cat; and striking his spurs into his horse, he went off down the street.

About 1, Mr. Harry Ford came into my place and said, Your favorite, General Grant, is to be at the theater tonight, and if you want to see him you had better go and get a seat. Went and secured a seat directly opposite the President's box, in the front dress circle. Saw the President and his family when they came in, accompanied by Miss Harris and Major Rathbone.

Near 10 o'clock, during the second scene of the third act of *Our American Cousin*, saw Booth pass along near the President's box, and then stop and lean against the wall. After standing there a moment, saw him step down one step, put his hands on the door and his knee against it, and push the door open—the first door that goes into the box. Saw no more of him until he made a rush for the front of the box and jumped over. He put his left hand on the railing, and with his right he seemed to strike back with a knife. Could see the knife gleam, and the next moment he was over the box. As he went over, his hand was raised, the handle of the knife up, the blade down. The President sat in the left-hand corner of the box, with Mrs. Lincoln at his right. Miss Harris was in the right-hand corner,

Major Rathbone sitting back at her left, almost in the center of the box. At the moment the President was shot, he was leaning his hand on the railing, looking down at a person in the orchestra; holding the flag that decorated the box aside to look between it and the post, I saw the flash of the pistol right back in the box. As the person jumped over and lit on the stage, I saw it was Booth. As he struck the stage, he rose and exclaimed, *Sic semper tyrannus!* and ran directly across the stage to the opposite door, where the actors come in. Heard some halloo out of the box, *Revenge for the South!* Do not know that it was Booth, though I suppose it must have been; it was just as he was jumping over the railing. His spur caught in the blue part of the flag that was stretched around the box, and, as he went over, it tore a piece of the flag, which was dragged half way across the stage on the spur of his right heel.

Just as Booth went over the box saw the President raise his head, and then it hung back. Saw Mrs. Lincoln catch his arm, and was then satisfied that the President was hurt. By that time Booth was across the stage. A young man, Harry Hawk, was the only actor on the stage at the time.

Left the theater as quickly as I could, and went to the police station on D street, to give notice to the Superintendent of Police, Mr. Webb. Then ran up D street to the house of Mr. Peterson, where the President was taken. Colonel Wells was standing on the steps, and I told him that I had seen it all, and I

knew the man who jumped out of the box.

Next morning I saw Mr. Gifford, who said, You made a hell of a statement about what you saw last night; how could you see the flash of the pistol when the ball was shot through the door? Sunday morning Miss Harris, accompanied by her father, Judge Olin, and Judge Carter, came down to the theater, and I went in with them. We examined the hole in the door of the box through which Mr. Gifford said the ball had been shot. It looked to me as if it had been bored by a gimlet, and then rimed round the edge with a knife. After this examination was satisfied that the pistol had been fired in the box.

Mr. Gifford is chief carpenter of the theater, and had full charge of it. Recollect when Richmond was surrendered I said to him, Have you got any flags in the theater? He replied, Yes, I have; I guess there is a flag about. I said, Why do you not run it out on the roof? He answered, There's a rope, isn't that enough? I said, You are a hell of a man, you ought to be in the Old Capitol. He didn't like me anyhow.

Cross-examined. We looked for the bar that had been used to fasten the box door, but could not find it. Know Mr. Spangler very well. Never saw him wear a mustache.

James J. Gifford. Was the builder of Ford's theater, and am stage carpenter there. Noticed Mr. Harry Clay Ford in the President's box, on 14th of April putting flags out; think I saw Mr. Raybold with him. In the

box on Saturday, 15th, saw the large rocking chair.

On Monday morning, after the assassination was trying to find out how the door of the President's box had been fastened, when I first saw the mortise in the wall. The Secretary of War came down to the theater to examine the box, and told me to bring a stick and fit it in the door. Found that a stick about three feet six inches long, if pressed against it, would prevent the door from being opened on the outside, but if the door was shaken, the stick would fall. The mortise in the plastering looked as though it had been recently made, and had the appearance of having been made with a knife. Had a chisel or hammer been used, it would have made a sound, but with a knife it could have been done quietly. It might have required some ten or fifteen minutes to make it. Had not been in the box for a week. Had the marks been there then, think I should have observed it, as I am particular in looking around to see the place is clean. It was the duty of Raybold, the upholsterer, to decorate the box, but he had a stiff neck and got Mr. Clay Ford to do it for him.

Cross-examined. Was on the stage until the curtain went up at each act, and saw Spangler there each time. Was in front of the theater a part of the time between the second and third acts. Did not see Spangler in front of the theater at all; do not think he could have been there without my knowing it. Never knew Spangler to wear a mustache.

Ritterspaugh was on duty with

Spangler on his side of the stage that night.

Know nothing more of Booth's connection with Spangler than that it was friendly. Everybody about the house, actors and all, were friendly with Booth; he had such a winning way he made every person like him. He had access to the theater by all the entrances, just as the employes of the theater had. Spangler appeared to be a sort of drudge for Booth, doing such things as hitching up his horse, etc.

Captain Theodore McGowan. Was present at Ford's theater on the night of the assassination. Was sitting in the aisle leading by the wall toward the door of the President's box, when a man came and disturbed me in my seat, causing me to push my chair forward to permit him to pass; he stopped and leisurely took a survey of the house. He took a small pack of visiting cards from his pocket, selecting one and then showed it to the President's messenger, who was sitting just below him. Whether the messenger took the card into the box or, after looking at it, allowed him to go in, do not know, but in a moment I saw him go through the door of the lobby leading to the box, and close the door.

After I heard the pistol fired, saw the body of a man descend from the front of the box toward the stage. He was hid from my sight for a moment by the heads of those who sat in the front row of the dress circle, but he reappeared, strode across the stage toward the entrance on the other side and, as he passed, I saw the gleaming blade of a dagger in his right hand. He disappeared

behind the scenes and I saw him no more.

Know J. Wilkes Booth, but, not seeing the face of the assassin fully, did not at the time recognize him as Booth.

Major Henry R. Rathbone. On the evening of 14th April at twenty minutes past 8, I, in company with Miss Harris, left my residence at the corner of Fifteenth and H streets, and joined the President and Mrs. Lincoln, and went with them, in their carriage, to Ford's theater. When the presence of the President became known, the actors stopped playing, the band struck up Hail to the Chief and the audience rose and received him with vociferous cheering. The party proceeded along in the rear of the dress circle and entered the box that had been set apart for their reception. On entering the box, there was a large arm chair that was placed nearest the audience, farthest from the stage, which the President took and occupied during the whole of the evening, with one exception, when he got up to put on his coat, and returned and sat down again. When the second scene of the third act was being performed, and while I was intently observing the proceedings upon the stage, with my back toward the door, I heard the discharge of a pistol behind me; looking round, saw through the smoke a man between the door and the President. The distance from the door to where the President sat was about four feet. Heard the man shout some word, which I thought was Freedom! I instantly sprang and seized him. He wrested himself from my grasp, and made a violent thrust at my breast with

a large knife. I parried the blow by striking it up, and received a wound several inches deep in my left arm, between the elbow and the shoulder. The man rushed to the front of the box, and I endeavored to seize him again, but only caught his clothes as he was leaping over the railing of the box. The clothes were torn in the attempt to hold him. As he went over upon the stage, I cried out, Stop that man! Then turned to the President; his position was not changed; his head was slightly bent forward, and his eyes were closed. Saw that he was unconscious, and, supposing him mortally wounded, rushed to the door for the purpose of calling medical aid.

On reaching the outer door of the passageway found it barred by a heavy piece of plank, one end of which was secured in the wall and the other resting against the door. It required considerable force to remove it. It was about four feet from the floor. Persons upon the outside were beating against the door for the purpose of entering. Removed the bar and the door was opened. Several persons who represented themselves as surgeons were allowed to enter. Saw there Colonel Crawford and requested him to prevent other persons from entering the box.

Returned to the box and found the surgeons examining the President's person. They had not yet discovered the wound. It was determined to remove him from the theater. He was carried out and I then proceeded to assist Mrs. Lincoln, who was intensely excited, to leave the theater. On reaching the head of the stairs, requested Major Potter to aid me

in assisting Mrs. Lincoln across the street to the house where the President was being conveyed. The wound which I had received had been bleeding very profusely. On reaching the house, feeling very faint from the loss of blood, I seated myself in the hall, and soon after fainted away. Upon the return of consciousness was taken to my residence.

The time which elapsed between the discharge of the pistol and the time when the assassin leaped from the box did not exceed thirty seconds. Neither Mrs. Lincoln nor Miss Harris had left their seats.

(A bowie knife with a heavy seven-inch blade, was exhibited to witness, stains of blood being still upon the blade.)

This knife might have made a wound similar to the one I received. The assassin held the blade in a horizontal position, I think; it came down with a sweeping blow from above.

William Withers, Jr. Am the leader of the orchestra at Ford's theater. On the night of 14th, was returning to the orchestra, when I heard the report of a pistol. Stood with astonishment, thinking why they should fire off a pistol in Our American Cousin. As I turned round and saw a man running toward me with his head down, did not know what was the matter and stood completely paralyzed. Could not get out of his way, so he hit me on the leg, and turned me around, and made two cuts at me, one in the neck and one on the side, and knocked me from the third entrance down to the second. The scene saved me. As I turned got a side view of him and I saw it was John Wilkes Booth. He then

made a rush for the back door, and out he went. Returned to the stage and heard that the President was killed, and I saw him in the box apparently dead.

I noticed that there was nothing to obstruct his passage out, and this seemed strange to me, for it was unusual.

Cross-examined. On that night the passage seemed to be clear of everything. Do not think it wanted many minutes until the scene changed, and it was a time when the stage and passageway would have been somewhat obstructed by some of the sceneshifters, and the actors in waiting for the next scene, which requires their presence. Never remember seeing Spangler wear a mustache.

Joseph B. Stewart. Was at Ford's theater on the night of the assassination, in the front seat of the orchestra, on the right-hand side. The sharp report of a pistol at about half-past 10 startled me. Heard an exclamation, and simultaneously a man leaped from the President's box, lighting on the stage. He came down with his back slightly toward the audience, but rising and turning, his face came in full view. At the same instant I jumped on the stage and the man disappeared at the left-hand stage entrance. Ran across the stage as quickly as possible, following the direction he took, calling out Stop that man! When about twenty feet from the door through which the man ran, the door slammed to and closed. I opened the door and passed out. Some one said, He is getting on a horse at the door, and I heard the tramping of a horse; perceived a man mounting a horse. The moon was just beginning to

rise. The horse was moving with a quick, agitated motion—as a horse will do when prematurely spurred in mounting—with the reins drawn a little to one side. Noticed the horse describe a kind of circle from the right to the left. Ran in the direction where the horse was heading, and when within eight or ten feet from the head of the horse, the rider brought him round in a circle from the left to the right. I crossed in the same direction, aiming at the rein, and was now on the right flank of the horse. I could have reached his flank with my hand. Again he backed to the right side of the alley, brought the horse forward and spurred him; at the same instant he crouched forward, down over the pommel of the saddle. The horse then went forward, and soon swept rapidly to the left, up toward F street. I ran after the horse some forty or fifty yards, and commanded the person to stop. All this occupied only the space of a few seconds.

After passing the stage, saw several persons in the passageway, ladies and gentlemen, one or two men, perhaps five persons.

Near the door on my right hand saw a person standing, who seemed to be in the act of turning, and who did not seem to be moving about like the others. Every one else that I saw but this person seemed intensely excited, literally bewildered; they were all in a terrible commotion and moving about, except this man.

That man (pointing to Edward Spangler) looks more like the person I saw near the door than anybody else I see here. He recalls the impression of the man's

visage as I passed him. When the assassin alighted on the stage, I believed it was J. Wilkes Booth, and so informed Richards, Superintendent of the Police, that night. Knew Booth by sight very well, and when I was running after him had no doubt in my mind that it was Booth. Felt a good deal vexed at his getting away, and had no doubt when I started across the stage that I could catch him.

Am satisfied that the person I saw inside the door was in a position and had an opportunity, if he had been disposed to do so, to have interrupted the exit of Booth, and from his manner, he was cool enough to have done so. This man was nearest of all to the door, and could have opened and gone out before I did, as it would have been but a step to the right and a reach to open it.

Cross-examined. My impression is the man had some little beard. Do not undertake to swear positively that the prisoner, Spangler, is the person I saw near that door; but do say that there is no one among these prisoners who calls that man to my mind, except the one who, I am told, is Mr. Spangler; am decided in my opinion that Spangler resembles the person I saw there.

Joe Simms (colored). Have worked at Ford's theater for two years. While I was up on the flies to wind up the curtain heard the fire of a pistol, and looking down I saw Booth jump out of a private box down on to the stage, with a bowie knife in his hand, and then making his escape across the stage. Between 5 and 6 o'clock that day, was in front of the theater when I saw

Booth go into the restaurant by the side of the theater. Spangler was sitting out in front, and Booth invited him to take a drink. Did not hear a word spoken between them. Booth and Spangler were very intimate. Have often seen them together, and drinking together.

Cross-examined. Spangler had charge of Booth's horses. Spangler's place on the stage is at the back part of the stage, next to the back door leading out to the side alley. Saw him in the first act. Do not remember seeing him in the second, but I was not looking for him. When I saw Spangler he had his hat on. Never saw him wear a mustache. Mr. Spangler was on the stage attending to his business as usual that night. He was obliged to be there. I did not see Spangler in the President's box in the afternoon nor did I see him when I came away from the private box.

John Miles (colored). Work at Ford's theater. Was there on the day of the assassination of the President. About 3 in the afternoon Booth put his horse in the stable, and Ned Spangler and Jim Maddox were with him. The stable is not more than five yards from the theater. Between 9 and 10 that night, J. Wilkes Booth brought a horse from the stable and, coming to the back door of the theater, called Ned Spangler three times. When Booth first called Spangler some person told him that Booth called him and he ran across the stage to him. Saw nothing more of Spangler or Booth until I heard the pistol go off. In a minute I heard a horse's feet going out of the alley. Before this I saw

a boy holding the horse in the alley.

Cross-examined. When Booth called Spangler, was up on the flies, about three and a half stories from stage. From the time Booth brought the horse until he went away, and from the time I looked out of the window John Peanuts was lying on the bench holding the horse. After the President was shot, came down the stairs and saw Spangler out there at the door Booth went out of. Spangler came out and I asked him who it was that held the horse and he said Hush! don't say anything about it; and I didn't say any more, though I knew who it was, because I saw the boy holding the horse. Spangler appeared to be excited; every person appeared to be very much excited. By the time I got downstairs, the door through which Booth had passed was open. Never saw Spangler wear a mustache.

Dr. Robert King Stone. Was the family physician of the late President of the United States. Was sent for by Mrs. Lincoln immediately after the assassination. Arrived in a very few moments, and found the President had been removed from the theater to the house of a gentleman living directly opposite; had been carried into the back room of the residence and was there placed upon a bed. Found a number of gentlemen, citizens, around him and, among others, two assistant surgeons of the army, who had brought him over from the theater, and had attended to him. They immediately gave the case over to my care, knowing my relations to the family. Proceeded to examine the President, and

found that he had received a gunshot wound in the back part of the left side of his head, into which I carried my finger. At once informed those around that the case was a hopeless one; that the President would die; that there was no positive limit to the duration of his life; that his vital tenacity was very strong, and he would resist as long as any man could; but that death certainly would soon close the scene. Remained with him, doing whatever was in my power, assisted by my friends; but nothing could be done, and he died from the wound the next morning at about half-past 7 o'clock. It was about a quarter past 10 that I reached him.

Next day, previous to the process of embalment, an examination was made in the presence of Surgeon-General Barnes, Dr. Curtis and Dr. Woodward of the army. We traced the wound through the brain, and the ball was found in the interior part of the same side of the brain, the left side; it was a large ball, resembling those which are shot from the pistol known as the Derringer; an unusually large ball—that is, larger than those used in the ordinary pocket revolvers. It was a leaden hand-made ball, and was flattened somewhat in its passage through the skull, and a portion had been cut off in going through the bone. I marked the ball A. L., the initials of the late President, and in the presence of the Secretary of War, in his office, inclosed it in an envelope, sealed it with my private seal, and indorsed it with my name. It was left in his custody, and he ordered it to be placed among the archives of his

department. This is the ball which I extracted from the head of the President. This smaller piece is the fragment which was cut off in its passage through the skull. The ball was flattened, as I have before described.

William T. Kent. About three minutes after the President was shot, I went into his box; there were two other persons there and a surgeon, who asked me for a knife to cut open the President's clothes. I knocked my foot against a pistol, which I picked up and, holding it up, I cried out, I have found the pistol. I gave it up to Mr. Gobright, the agent of the Associated Press. This is the pistol I picked up in the President's box.

Isaac Jacquette. Was present at Ford's theater on the night of the assassination. Soon after the President was carried out, I went to the box with several others. This wooden bar was lying on the floor inside of the first door going into the box. Picked it up and took it home with me. There was an officer stopping at my boarding house and he wanted a piece of it, which I sawed off for him, but he concluded afterward not to take it. It is nearly covered with spots of blood which were fresh at the time when I found it.

Judge A. B. Olin. On Sunday, 16th April, accompanied by Miss Harris, visited Ford's theater and made an examination of the President's box, doors, locks, etc. My attention was called to the incision into the wall that was prepared to receive the brace that fitted into the corner of the panel of the outer door; the brace was not there. Discovered that and looked for the remains of the

plastering that had been cut from the wall to make this incision. That, so far as I could observe, had been carefully removed from the carpet, where it must have fallen, as it was cut by some sharp instrument.

The indentation upon the panel of the door where the brace might have been fixed from against the wall, was quite perceptible, and the brace was so fixed that it would be very difficult to remove it from the outside. Think it could not have been done without breaking the door down.

It had been said that the pistol was discharged through the panel of the door. As the passageway is dark, I procured a light and examined very carefully the hole through the door. Discovered at once that that was made by some small instrument in the first place and was cut out then by a sharp instrument like a penknife; and, by placing the light near the door, I thought I saw marks of a sharp cutting knife used to clean out the hole. The chips that must have been made by boring and cutting this small hole had been removed. It was a freshly-cut hole.

Discovered that the clasp which fastens the bolt of the outer door had been loosened. The upper screw holding the clasp had been loosened in such a way that when the door was locked I could push it open with my forefinger.

I placed the chair in which the President sat in the position, as nearly as Miss Harris could recollect, it had occupied on the night of the assassination. Seating myself in it, and closing the door, it was found that my head

—about midway from the base to the crown—would be in the range of the eye of a person looking through the hole in the door. It was a large high-backed arm chair with satin cushions; not a rocking chair.

David C. Reed. On 14th April about 2, as I was standing just below the National theater, saw John H. Surratt, and we bowed to each other as he passed. He was dressed in a country-cloth suit of drab, very fine in its texture and appearance, and very genteelly got up. He was on foot, but I noticed he wore a pair of new, brass-plated spurs, with very large rowels.

Cross-examined. Last saw John H. Surratt before the 14th April in October. In appearance John H. Surratt is light complexioned, with rather singular colored hair; it is not red, it is not white; it is a kind of sandy. Did not notice whether he wore a mustache or a goatee. I never saw him in that dress before. In height he is about five feet ten inches; he is not a stout man, but rather delicate. I do not suppose he would weigh over one hundred and forty pounds, judging from his build. In walking, he stoops a little.

John F. Coyle. Am connected with the National Intelligencer. Knew J. Wilkes Booth in his lifetime, though not intimately. The statement that Booth, on the night before the assassination, wrote an article in which he set forth the reasons for his crime, and left it with one of the editors of the National Intelligencer, is not correct. No such paper was ever received, to my knowledge.

John Fletcher. David E. Herold came to our stable, in com-

pany with the prisoner, Atzerodt, about a quarter to 1 on 14th April and engaged a horse, which he said he would call for at 4. At a quarter past 4 he came and asked me how much I would charge him for the hire of the horse. I told him five dollars. He wanted it for four. I told him he could not have it for that. He knew the horse, and inquired for that particular one. I went down to the stable with him, and told him to take a mare that was in the stable; but he would not have her. I then told him I would give him the other horse. He then wanted to see the saddles and bridles. I showed him a saddle and he said it was too small. Then I showed him another. That suited him very well, only that it had not the kind of stirrups he wanted. The stirrups were covered with leather, and he wanted a pair of English steel stirrups. He then wanted to see the bridles. I took him into the office and showed him the bridles, and he picked out a double-reined bridle. Before he mounted the horse he asked me how late he could stay out with him. I told him he could stay out no later than 8 or 9.

At 10, having a suspicion that Herold was going to take the horse away, I went to Pennsylvania avenue, close to Willard's, where I saw Herold riding the horse. I hallooed to him, You get off that horse now; you have had it long enough; but he put spurs to it and went as fast as the horse could go up Fourteenth street, making no reply to me. That was about twenty-five minutes past 10.

Returned to the stable for a horse myself, and rode along the avenue to the south side of the

Capitol. There met a gentleman and asked him if he had passed any one riding on horseback. He said yes, and that they were riding very fast. Followed on until I got to the Navy Yard bridge, where the guard halted me, and called for the sergeant of the guard. He came out, and I asked him if a roan horse had crossed that bridge, giving him a description of the horse, saddle and bridle and the man that was riding. He said, Yes, he has gone across the bridge. Did he stay long here? I asked. He replied, He said that he was waiting for an acquaintance of his that was coming on; but he did not wait, and another man came riding a bay horse or a bay mare, right after him. Did he tell you his name? Yes, he said his name was Smith. Asked if I could cross the bridge after them. He said, Yes, you can cross, but you can not return. I said, If that is so, I will not go. Turned around and came back to the city again. At Murphy's stable asked of Dorsey whether this horse had been put up there. He said, No; but, said he, you had better keep in, for President Lincoln is shot and Secretary Seward is almost dead.

Cross-examined. When I caught sight of Herold on the horse near Willard's, the horse seemed somewhat tired, and as if he wanted to go to the stable, and appeared as if he had been ridden a right smart distance. Am satisfied that it was Herold I saw on my horse.

Became acquainted with Herold by his calling at our stable the 5th or 6th April, inquiring for Atzerodt, but he did not inquire for him by name; he wanted to know if the man that kept

the horse in the side stable had been there that day.

Sergeant Silas T. Cobb. On the night of 14th of April was on duty at the Navy Yard bridge. About 10 or 11 a man approached rapidly on horseback. Asked him, Who are you, sir? He said, my name is Booth. Asked him where he was from. He made answer, From the city. Where are you going? I said; and he replied, I am going home. Asked him where his home was. He said it was in Charles. Asked him what town. Said he did not live in any town. I said, You must live in some town. Said he, I live close to Beantown; but do not live in the town. Asked him why he was out so late; if he did not know the rule that persons were not allowed to pass after 9 o'clock. He said it was new to him; that he had had somewhere to go in the city, and it was a dark night, and he thought he would have the moon to ride home by. I thought he was a proper person to pass, and I passed him.

(Photograph of J. Wilkes Booth shown the witness.)

That is the man that passed first. He rode a small-sized horse, a very bright bay, with a shining skin, and it looked as though he had just had a short burst—a short push—and seemed restive and uneasy, much more so than the rider.

Ten minutes after, another person came along. He was not riding so rapidly as the first. Asked who he was, and said that his name was Smith, and that he was going home; that he lived at the White Plains. Asked him how it was that he was out so late. He made use of a rather indelicate expression, and said

that he had been in bad company. Brought him up before the guard house door so that the light shone full in his face and on his horse.

(The accused, David E. Herold, was directed to stand up.)

He is very near the size of the second horseman; but, I should think, taller, although I can not be sure, as he was on horseback. He had a lighter complexion than this man. After his explanation, I allowed him to pass. He rode a medium-sized roan horse. The horse did not move like a trotting horse. He carried his head down.

Afterward, a third horseman rode up, and made inquiry after a roan horse; after a man passing on a roan horse. He made no inquiry about the other horseman who had passed first. He did not seem to have any business on the other side of the bridge, so I turned him back.

Do not think the moon was up at that time, but rose after the horsemen had gone forward.

Polk Gardiner. On the night of 14th April was on the Bryantown road, coming to Washington, and about 11, when on Good Hope Hill, met two horsemen, one about half a mile behind the other, and both riding very fast. The first, who was on a dark horse, think a bay, asked me if a horseman had passed ahead; then asked me the road to Marlboro, and if it did not turn to the right. I told him no; to keep the straight road.

As the second horseman rode up, a lot of teamsters were passing at the time, and I heard him ask them whether a horseman had passed ahead. He rode a roan horse, a light horse, a roan or an iron gray.

John M. Lloyd. Reside at Mrs. Surratt's tavern, Surrattsville, and am engaged in hotel keeping and farming. Some six weeks before the assassination, John H. Surratt, Herold and Atzerodt came to my house. All three in the bar room drank. John Surratt called me into the front parlor, and on the sofa were two carbines, with ammunition; also a rope from sixteen to twenty feet in length, and a monkey wrench. Surratt asked me to take care of these things and to conceal the carbines. Told him there was no place to conceal them, and I did not wish to keep such things. He then took me into a room in the back part of the building and showed me where I could put them underneath the joists of the second floor of the main building. I put them there according to his directions.

I stated to Colonel Wells that Surratt put them there, but I carried the arms up and put them in there myself. There was also one cartridge box of ammunition. Surratt said he just wanted these articles to stay for a few days, and he would call for them. The Tuesday before the assassination met Mrs. Surratt on the road at Uniontown. When she first broached the subject to me about the articles at my place, I did not know what she had reference to. Then she came out plainer, and asked me about the shooting irons. Had myself forgotten about their being there. Told her they were hid away far back, and that I was afraid the house might be searched. She told me to get them out ready; that they would be wanted soon. Finally she

came out bolder with it and said they would be wanted soon. Told her that I had an idea of having them buried; that I was very uneasy about having them there.

On 14th April, in the evening when I got home, about 5, I found Mrs. Surratt there. She met me out by the wood pile. She told me to have those shooting irons ready that night, there would be some parties who would call for them. She gave me something wrapped in a piece of paper, which I found to be a field glass. She told me to get two bottles of whisky ready, and that these things were to be called for that night.

Just about midnight Friday, Herold came into the house and said, Lloyd, for God's sake make haste and get those things. Went and got the carbines, supposing they were the parties Mrs. Surratt had referred to, though she didn't mention any names. He must have been apprised that I already knew what I was to give him. Mrs. Surratt told me to give the carbines, whisky and field glass. Did not give them the rope and monkey wrench. Booth didn't come in. Did not know him; he was a stranger to me. He remained on his horse. Herold came into the house and got a bottle of whisky and took it out to him, and he drank while sitting on his horse. Herold drank some out of the glass before he went out.

Do not think they remained over five minutes. They only took one of the carbines. Booth said he could not take his because his leg was broken.

Just as they were leaving, the man who was with Herold said, I will tell you some news if you

want to hear it. I said, I am not particular; use your own pleasure about telling it. Well, said he, I am pretty certain that we have assassinated the President and Secretary Seward. Whether Herold was present at the time he said that, or whether he was across the street, am not positive; I was much excited and unnerved.

The moon was shining when the men came. The man whose leg was broken was on a light-colored horse; supposed it to be a gray horse, in the moonlight. It was a large horse, I suppose some sixteen hands high; the other, ridden by Herold, was a bay and not so large.

Have heard Atzerodt called by the nickname of Port Tobacco. Used to call him Miserable, and then I called him, for a long time, Stranger. I had been acquainted with him two months before the assassination.

(Two carbines, Spencer rifles, were exhibited to witness.)

The carbines were brought in covers. The cover that is on this one looks like the cover in which it was brought to me. Took the cover off one, and the peculiar kind of breech attracted my attention, never having seen one like it before. They look like the carbines that were brought to my place.

Cross-examined. I rented Mrs. Surratt's house at Surrattsville about 1st of December last, and Mrs. Surratt frequently came there after that. When I met Mrs. Surratt on the Tuesday preceding the assassination, I was coming to Washington, and she was going to my place, I supposed. I do not know that the word carbine was mentioned. She spoke about those shooting irons.

It was a very quick and hasty conversation. I am confident that she named the shooting irons on both occasions; not so positive about the first as I am about the last; I know she did on the last occasion. On the Friday I do not think Mrs. Surratt was there over ten minutes.

When I first drove up to the woodyard, Mrs. Surratt came out to where I was. The first thing she said to me was, Talk about the devil and his imps will appear, or something to that effect. I said, I am not aware that I was a devil before. Well, said she, Mr. Lloyd, I want you to have those shooting irons ready; there will be parties here tonight who will call for them. At the same time she gave me something wrapped up in a newspaper, which I did not undo until I got upstairs. Mrs. Surratt then requested me to fix her buggy for her. Mrs. Offutt, my sister-in-law, was in the yard; but whether she heard the conversation or not, I do not know.

The first information I gave of this occurrence was to Lieutenant Lovett and Captain Cottingham; but did not detail all the circumstances. I told these officers that it was through the Surratts that I had got myself into the difficulty. Gave full information of the particulars to Colonel Wells on the Saturday week following.

When Booth and Herold left my house, they took the road toward T. B. Herold came up toward the stable between me and the other man, who was on the light-colored horse, and they rode off at a pretty rapid gait. When Herold brought back the bottle from which Booth had drank the

whisky, he remarked to me, I owe you a couple of dollars; and said he, Here. With that he offered me a note which next morning I found to be one dollar, which just about paid for the bottle of liquor they had pretty nearly drank.

Think I told Mrs. Offutt, after Mrs. Surratt went away, that it was a field glass she had brought. She did not tell me that Mrs. Surratt gave her a package.

To Mr. Stone. Booth did not take a carbine with him. Only brought one carbine down; Booth said he could not carry his. Brought the carbine and gave it to Herold before they said they had killed the President; they never told me that until they were about riding off. Was right smart in liquor that afternoon and after night I got more so. A good many soldiers came there on Saturday, and on Sunday night others came and searched the place. When they asked if I had seen two men pass that way in the morning, told them I had not. That is the only thing I blame myself about. If I had given the information they asked of me, I should have been perfectly easy regarding it. This is the only thing I am sorry I did not do.

Lieutenant Alexander Lovett. On the day after the assassination of the President, went with others in pursuit of the murderers. We went by way of Surrattsville to the house of Dr. Samuel A. Mudd, about thirty miles from Washington, and about one-quarter of a mile or so off the road that runs from Bryantown, arriving there on Tuesday, 18th of April. Dr. Mudd did not at first seem in-

clined to give us any satisfaction; afterward he said on Saturday morning, at daybreak, two strangers had come to his place; one of them rapped at the door, the other remained on his horse. Mudd went down and opened the door, and with the aid of the young man who had knocked at the door helped the other, who had his leg broken, off his horse, took him into his house and set his leg.

The man with broken leg he said he did not know. The other, he said, was a young man about 18. Mudd said that one of them called for a razor, which he furnished, together with soap and water, and the wounded man shaved off his moustache. One of our men remarked that this was suspicious, and Dr. Mudd said it did look suspicious; asked him if he had any other beard. He said, Yes, he had a long pair of whiskers. He said the men remained there but for a short time. I understood him they left in the course of the morning. He said that the wounded man went off on crutches that he (Mudd) had had made for him. The other led the horse of the injured man, and he (Mudd) showed them the way across the swamp. He told me that he had heard, at church, on Sunday morning, that the President had been assassinated, but did not mention by whom.

It was generally understood at this time that Booth was the man who assassinated the President; even the darkeys knew it; and I was told by them that Booth had been there, and that he had his leg broken.

On Friday, 21st of April, went to Dr. Mudd's to arrest him; his wife went up stairs and brought

down a boot. Mudd said he had cut it off the man's leg, in order to set the leg. I turned down the top of the boot, and saw the name J. Wilkes written in it.

I called Mudd's attention to it, and he said he had not taken notice of it before.

(A long riding boot, for the left foot, slit up in front for about eight inches, was exhibited.)

That is the boot.

At the second interview, he still insisted that the men were strangers to him; made the remark to him that his wife said she had seen the whiskers detached from his face, and I suppose he was satisfied then, for he subsequently said it was Booth. After we left his house, one of the men showed him Booth's photograph, and Mudd remarked that it did not look like Booth, except a little across the eyes; he said he had an introduction to Booth in November or December last, at church, from a man named Johnson or Thompson; he said he had been along with Booth in the country, looking up some land, and was with him when he bought a horse of Esquire Gardiner, last fall.

Dr. Mudd stated the injured man had a pair of revolvers, but he said nothing about the other having a carbine, or either of them having a knife; his manner was very reserved and evasive.

Cross-examined. The Doctor never told me that he had Booth up stairs; he told me he was on the sofa or lounge.

Mudd stated, at our first interview, that the men remained but a short time; afterward his wife told me that they had stayed

till about 3 or 4 o'clock, on Saturday afternoon; Mudd said they had considerable greenbacks; and it was customary to make a charge to strangers in such a case. That the men went to the Rev. Dr. Wilmer's, that he took them to the swamps; that they were on their way to Allen's Fresh.

When we asked Dr. Mudd whether two strangers had been there, he seemed very much excited, and got as pale as a sheet of paper, and blue about the lips, like a man that was frightened at something he had done. Dr. George Mudd was present when I asked if two strangers had been there.

Lieutenant David D. Dana. The day after the assassination, sent a guard of four men to Bryantown about 1 o'clock. I communicated the intelligence of the assassination, and the name of the assassin, to the citizens; it spread through the village in a quarter of an hour.

William Williams. On Monday, 17th April, in company with some cavalry, I proceeded to Sur-rattsville. Next day, Tuesday, I arrived at Dr. Mudd's. He was not at home, and his wife sent for him; asked if any strangers had been that way, and he said there had not. Some of the officers then talked with him; think he stated that he first heard of the assassination of the President at church, on the Sunday morning. He seemed to be uneasy, and unwilling to give us any information without being asked directly.

On Friday, 21st, we went there again for the purpose of arresting Dr. Mudd; asked him concerning the two men who had

been at his house, one of them having a broken leg. He then said that they had been there; asked him if those men were not Booth and Herold. He said they were not; said he knew Booth, having been introduced to him last fall by a man by the name of Thompson.

Showed him Booth's picture, and asked him if that looked like the man who had his leg broken. He said it did not; he did not remember the features; after awhile, however, he said it looked something like Booth across the eyes.

At our second visit to Dr. Mudd's house, I informed Mrs. Mudd that we had to search the house. She then said that the man with the broken leg had left his boot in the bed. She brought the boot down. It was a long riding boot, with J. Wilkes and the maker's name, Broadway, N. Y., written inside. The boot was cut some ten inches from the instep.

Dr. Mudd said the men had arrived before daybreak, and that they went away on foot between 3 and 4 o'clock on the afternoon of Saturday. He had set the man's leg, and had had crutches made for him by one of his men.

Cross-examined. Lieutenant Lovett was present at this conversation; believe it was on Friday that Dr. Mudd said that the first knowledge he had of the assassination was received at church on the Sunday before. I asked him the question on Friday, if two strangers had been there. He said that there had been. The wounded man had a moustache, he said, and pretty long chin-whiskers; asked him if

he thought the whiskers were natural. He said he could not tell. The injured man had a shawl round his shoulders.

Simon Gavacan. Was at Dr. Mudd's house on the forenoon of Tuesday, the 18th of April, in pursuit of the murderers of the President. We inquired if two men passed there on the Saturday morning after the assassination, and Dr. Mudd said no. Then we inquired more particularly if two men had been there, one having his leg fractured. He said yes; told us that they had come about 4, or half-past 4, Saturday morning, rapped at his door; that he was a little alarmed at the noise, but came down and let them in; that he and the other person assisted the man with the broken leg into the house, and that he attended to the fractured leg as well as he could, though he had not much facilities; he said the wounded person stayed on the sofa for a while, and after that was taken up stairs, and remained there until between 3 and 5 o'clock in the afternoon of Saturday; said that he went out with the other man to find a buggy to take away the wounded man, but could not get one. He took them part of the way to show them the road. He told us he did not know the persons at all.

On Friday, 21st, we went to Dr. Mudd's again, for the purpose of arresting him and searching his house. He was not in, but his wife sent for him. When he came, we told him that we would have to search his house. His wife then went up stairs and brought down a boot and a razor. Inside the leg of the boot we found the words, J. Wilkes. We

asked him if he thought that was Booth, and he said he thought not; said the man had whiskers on, but that he thought he shaved off his moustache up stairs. Inquired of him if he knew Booth, he said that he was introduced to him last fall by a man named Thompson, but he thought the man who had been there was not Booth.

Joshua Lloyd. Was engaged in the pursuit of the murderers of the President; got to Dr. Mudd's on Tuesday, 18th; asked him if he had not heard of the President being assassinated; he said yes; then asked him if he had seen any of the parties—Booth, Herold or Surratt; he said he had never seen them.

On Friday, 21st, at the second interview, he said two men came there about 4 on Saturday morning, and remained until about 4 in the afternoon. They came on horseback; one of them had a broken leg, and when they left his house one was riding and the other walking, leading his horse.

Mrs. Mudd seemed very much worried, so did the Doctor, and he seemed very much excited. Lieutenant Lovett and Mr. Williams did most of the talking; Dr. Mudd said that he had been in company with Booth; that he had been introduced to him by a man named Thompson, I think he said, at church. He offered no explanation of his previous denial. When the men left, he said they went up the hill toward Parson Wilmer's, and I think he said he showed them the road; understood him to say that the man's leg was broken by the fall of the horse.

Cross-examined. Each time we went to his house Dr. Mudd was

out, but not far away, for he was not long in returning with the messenger sent for him. At the first interview, I asked if any strangers had passed that way, and then if Booth and Herold had passed; described them to him, and the horses they rode, and he denied either that any strangers or Booth and Herold had passed.

Before he came to the house, Mrs. Mudd brought us the boot, and when the Doctor saw that we had the boot, he admitted that Booth had been there. Dr. Mudd then brought the razor down himself, and gave it to Lieutenant Lovett.

Willie S. Jett. Was of the Virginia Cavalry and commissary agent of the Confederate States; was on my way from Fauquier County (where I had been with Mosby's command) to Caroline County, Virginia, in company with Lieutenant Ruggles and a young man named Bainbridge. At Port Conway saw a wagon at the ferry, on the Monday week after the assassination of President Lincoln. A young man got out of it, came toward us, and asked us what command we belonged to. We were all dressed in Confederate uniform. Lieutenant Ruggles said, We belong to Mosby's command. He then said, If I am not inquisitive, can I ask where you are going? I spoke then, and replied, That's a secret, where we are going. After this we went back on the wharf, and a man with crutches got out of the wagon. One of us asked him what command he belonged to, and he replied, To A. P. Hill's corps. Herold told us their name was Boyd; that his brother was wounded below Peters-

burg, and asked if we would take him out of the lines. We did not tell him where we were going. Herold asked us to go and take a drink, but we declined. We then rode up to the house there, and having tied our horses, we all sat down. After we had talked a short time, Herold touched me on the shoulder and said he wanted to speak to me; he carried me down to the wharf, and said, I suppose you are raising a command to go South? and added that he would like to go along with us. I said, I cannot go with any man that I don't know anything about. He seemed very much agitated, and then remarked, We are the assassins of the President; was so much confounded that I did not make any reply. Lieutenant Ruggles was very near, watering his horse; called to him, and he came there, and either Herold or myself remarked to Lieutenant Ruggles that they were the assassins of the President. Booth then came up, and Herold introduced himself to us, and then introduced Booth. Herold passed himself off to us first as Boyd, and said he wanted to pass under that name; afterward told us their true names were Herold and Booth, but they kept the name of Boyd. Booth, I remember, had on his hand J. W. B.; went back to the house. Then across the river. Booth rode Ruggles' horse. Herold was walking. On the other side of the river I rode up to Port Royal, went into a house, and saw a lady; asked her if she could take in a wounded Confederate soldier, just as he represented himself to me, for two or three days. She at first consented; then after-

ward she said she could not; walked across the street to Mr. Catlitt's, but he was not at home. We then went on up to Mr. Garrett's, and there we left Booth. Herold and all of us went on up the road, then, to within a few miles of Bowling Green. Bainbridge and Herold went to Mrs. Clark's, and Ruggles and myself to Bowling Green. The next day Herold came to Bowling Green, spent the day, had dinner, and left in the evening, and that was the last I saw of him, except the night that they were caught, when I went down there; saw him the next morning in the custody of the officers; recognize the prisoner Herold as the man that I saw with Booth.

Cross-examined. Herold said he wanted us to help in getting Booth further South, but we had no facilities; he seemed a good deal disappointed after we made known our real object, that we were going on a visit. Booth was not present when Herold told me they were the assassins of the President; when he came up, he said he would not have told, that he did not intend telling. Herold did not appear very self-possessed; his voice trembled very much, and he was a good deal agitated. His language was, We are the assassins of the President; and then, pointing back to where Booth was standing, he said, Yonder is J. Wilkes Booth, the man who killed the President, or he may have said Lincoln; have never taken the oath of allegiance, but am perfectly willing to take it.

Everton J. Conger. Assisted in the pursuit of the murderers of the President.

The Judge Advocate. Will you

please take up the narrative of the pursuit at the point where you met with Willie Jett, and state what occurred.

Conger. On the night of the capture, found Jett in bed in a hotel in Bowling Green; told him to get up; that I wanted him. He put on his pants, and came out to me in the front part of the room. I said, Where are the two men who came across the river? He said, Can I see you alone? I replied, Yes, sir, you can. Lieutenant Baker and Lieutenant Doherty were with me. I asked them to go out of the room. After they were gone, he reached out his hand to me and said, I know who you want, and I will tell you where they can be found. Said I, That's what I want to know. He said, They are on the road to Port Royal, about three miles this side of that. At whose house are they? I asked. Mr. Garrett's, he replied; I will go there with you and show you where they are now, and you can get them. I said, Have you a horse? Yes, sir. Get it, and get ready to go. I said to him, You say they are on the road to Port Royal? Yes, sir. I said to him, I have just come from there. He stopped a moment, and seemed to be considerably embarrassed. Said he, I thought you came from Richmond. If you have come that way, you have come past them. I cannot tell you whether they are there now or not. I said it did not make any difference; we would go back and see; we gathered the party around the house together, and went back to Mr. Garrett's house. Just before we got to the house, Jett, riding with me, said, We are very near now to where we go through; let

us stop here and look around. We rode on together. I went back for the cavalry, and stationed the men around the house and quarters.

Found Lieutenant Baker at the door, telling somebody to strike a light and come out. I think the door was open when I got there. The first individual we saw was an old man, whose name was said to be Garrett; said to him, Where are the two men who stopped here at your house? They have gone. Gone where? Gone to the woods. He commenced to tell me that they came there without his consent; that he did not want them to stay. I said, I do not want any long story out of you; I just want to know where these men have gone. I turned to one of the men, Bring in a lariat rope here, and I will put that man up to the top of one of those locust trees. One of his sons then came in and said, Don't hurt the old man, he is scared; I will tell you where the men are you want to find. Said I, That is what I want to know; where are they? He said, In the barn.

We left the house immediately and went to the barn, and stationed the remaining part of the men; heard somebody walking around inside on the hay. Another Garrett had come from somewhere; and Lieutenant Baker said, You must go in the barn and get the arms from those men. He made some objection to it. Baker said, They know you, and you can go in. Baker said to the men inside, We are going to send this man, on whose premises you are, in to get your arms, and you must come out and deliver yourselves up. Garrett

went in, and he came out very soon and said, This man says Damn you, you have betrayed me, and threatened to shoot me. I said to him, How do you know he was going to shoot you? Said he, He reached down to the hay behind him to get his revolver, and I came out; directed Lieutenant Baker to tell them that if they would come out and deliver themselves up, very well; if not, in five minutes we would set the barn on fire. Booth replied: Who are you; what do you want; whom do you want? Lieutenant Baker said, We want you, and we know who you are; give up your arms and come out. He replied, Let us have a little time to consider it. Lieutenant Baker said, Very well, and some ten or fifteen minutes intervened. When he asked again, Who are you, and what do you want? I said to Lieutenant Baker, Do not by any remark made to him allow him to know who we are; you need not tell him who we are. If he thinks we are rebels, or thinks we are his friends, we will take advantage of it; we will not lie to him about it, but we need not answer any questions that have any reference to that subject, but simply insist on his coming out if he will. The reply was made, It don't make any difference who we are; we know who you are, and we want you; we want to take you prisoners. Said he, This is a hard case; it may be I am to be taken by my friends. Some time in the conversation he said, Captain, I know you to be a brave man, and I believe you to be honorable; I am a cripple. I have got but one leg; if you will withdraw your men in line one hundred yards from the door, I

will come out and fight you. Lieutenant Baker replied that he did not come there to fight; we simply came there to make him a prisoner; we did not want any fight with him. Once more after this he said, If you'll take your men fifty yards from the door, I'll come out and fight you; give me a chance for my life. The same reply was made to him. His answer to that was, in a singular theatrical voice, Well, my brave boys, prepare a stretcher for me.

Some time passed when I requested one of the Garretts to pile some brush up against the corner of the barn. He put some and came to me and said, This man inside says that if I put any more brush in there he will put a ball through me. Very well, said I, you need not go there again. After awhile Booth said, There's a man in here wants to come out. Lieutenant Baker said, Very well; let him hand his arms out, and come out. Some considerable talk passed in the barn; some of it was heard, some not. One of the expressions made use of by Booth to Herold, who was in the barn, was, You damned coward, will you leave me now? Go, go; I would not have you stay with me. Some conversation ensued between them, which I supposed had reference to the bringing out of the arms, which was one of the conditions in which Herold was to come out. It was not heard; we could simply hear them talking. He came to the door and said, Let me out. Lieutenant Baker said to him, Hand out your arms. The reply was, I have none. He said, You carried a carbine, and you must hand it out. Booth replied, The arms are mine, and I

have got them. Lieutenant Baker said, This man carried a carbine, and he must hand it out. Booth said, Upon the word and honor of a gentleman, he has no arms; the arms are mine, and I have got them. I stood by the side of the Lieutenant and said to him, Never mind the arms; if we can get one of the men out, let us do it, and wait no longer. The door was opened, he stuck out his hands; Lieutenant Baker took hold of him, brought him out, and passed him to the rear. I went around to the corner of the barn, pulled some hay out, twisted up a little of it, about six inches long, set fire to it, and stuck it back through on top of the hay. It was loose, broken-up hay, that had been trodden upon the barn floor. It blazed very rapidly.

Put my eye up to the crack next to the one the fire was put through, and looked in, and I heard something drop on the floor; supposed it to be Booth's crutch. He turned around toward me; he stood with his back partly to me, turning toward the front door. He came back within five feet of the corner of the barn; he had in his hands a carbine; looked along the cracks, one after another rapidly. He could not see anything. He looked at the fire, and from the expression of his face, am satisfied he looked to see if he could put it out, and was satisfied that he could not do it; it was burning so much. He dropped his arm, relaxed his muscles, turned around, and started for the door at the front of the barn; ran around to the other side, and when about half way round I heard the report of a pistol;

went right into the barn and found Lieutenant Baker looking at Booth, holding him, or raising him up. I said to him, He shot himself. Said he, No, he did not, either. Said I, Whereabouts is he shot—in the head or neck? I raised him then, and looked on the right side of the neck, and saw a place where the blood was running out. I said, Yes, sir; he shot himself. Lieutenant Baker replied very earnestly that he did not. I then said, Let us carry him out of here, this will soon be burning. We took him up and carried him out on the grass, underneath the locust trees, a little way from the door; went back into the barn immediately to see if the fire could be put down, but it was burning fast, and there was no water; then went back. Before this, I supposed him to be dead. He had all the appearance of a dead man; but when I got back to him, his eyes and mouth were moving; called immediately for some water, and put it on his face, and he somewhat revived, and attempted to speak; put my ear down close to his mouth, and he made several efforts to speak, and finally I understood him to say, Tell mother I die for my country. I said to him, Is that what you say? repeating it to him. He said, Yes. They carried him from there to the porch of Mr. Garrett's house, and laid him on an old straw bed, or tick. By that time he revived considerably; he could then talk in a whisper, so as to be intelligibly understood; he could not speak above a whisper. He wanted water; we gave it to him. He wanted to be turned on his face. I said to him, You cannot lie on your face;

and he wanted to be turned on his side; we turned him upon his side three times, I think, but he could not lie with any comfort, and wanted to be turned immediately back. He asked me to put my hand on his throat and press down, which I did, and he said, Harder. I pressed down as hard as I thought necessary, and he made very strong exertions to cough, but was unable to do so—no muscular exertion could he make; supposed he thought something was in his throat, and I said to him, Open your mouth and put out your tongue, and I will see if it bleeds. He did. I said, There is no blood in your throat; it has not gone through any part of it there. He repeated two or three times, Kill me, kill me. The reply was made to him, We don't want to kill you; we want you to get well; took what things were in his pockets, and tied them up in a piece of paper. He was not then quite dead. He would—once, perhaps, in five minutes—gasp; his heart would almost die out, and then it would commence again, and by a few rapid beats would make a slight motion. I left the body and the prisoner Herold in charge of Lieutenant Baker. I told him to wait an hour if Booth was not dead; if he recovered, to wait there and send over to Belle Plain for a surgeon from one of the gunships; and, if he died in the space of an hour, to get the best conveyance he could, and bring him on.

Stayed there some ten minutes after that was said, when the doctor there said he was dead.

(A knife, pair of pistols, belt holster, file, pocket compass,

spur, pipe, carbine, cartridges, and bills of exchange were shown to witness.)

That is the knife, belt, and holster taken from Booth; the pistols I did not examine, but they looked like these. That is the pocket compass, with the candle grease on it, just as we found it; the spur I turned over

to Mr. Stanton, and I judge this to be the one taken from Booth. That is the carbine we took; it is a Spencer rifle, and has a mark on the breech by which I know it. Both the pistols and carbine were loaded.

(This is one of the bills of exchange.)

No. 1492.

The Ontario Bank,

(Stamp.)

Montreal Branch.

Exchange for £61 12s. 10d.

Montreal, 27 Oct'r, 1864.

Sixty days after sight of this first of exchange (second and third of the same tenor and date unpaid), pay to the order of J. Wilkes Booth sixty-one pounds twelve shillings and ten pence sterling. Value received, and charge to acc't of this office.

To Messrs. Glynn Mills & Co., London.

(Signed) H. Stanus, Manager.

The farm of Mr. Garrett, in whose barn Booth was captured and killed, is in Caroline County, Va., about three miles from Port Royal, on the road to Bowling Green.

Had seen John Wilkes Booth in Washington, and recognized the man who was killed as the same; had before remarked his resemblance to his brother, Edwin Booth, whom I had often seen play.

Recognize among the accused, Herold, whom we took prisoner on that occasion in the barn. We found on Herold a small piece of a school map of Virginia, embracing the region known as the Northern Neck, where they were captured.

Cross-examined. We found no arms on Herold. He had some conversation with Booth while in the barn, in which Booth called him a coward; and when the question of delivering up the

arms was raised, Booth said that the arms were all his. When Booth said, There is a man in here who wants to get out, I think he added, who had nothing to do with it.

Think we got to Garrett's barn about 2 in the morning, and it was about fifteen minutes past 3 that Booth was shot and carried out on the grass.

Serg't Boston Corbett (sworn.)

The *Judge Advocate*. Conger had just detailed to the Commission the circumstances connected with the pursuit, capture and killing of Booth, in which, I believe, you were engaged; state what part you took in the capture and killing of Booth, taking up the narrative at the point when you arrived at the house.

Sergeant Boston Corbett. When we rode up to the house, my commanding officer, Lieutenant Doherty, told me that Booth was in that house, saying, I want you

to deploy the men right and left around the house, and see that no one escapes. We found Booth was in the barn. A guard was thrown around the barn, closely investing it, with orders to allow no one to escape. We had been previously cautioned to see that our arms were in readiness for use. After being ordered to surrender, and told that the barn would be fired in five minutes if he did not do so, Booth made many replies. He wanted to know who we took him for; he said that his leg was broken; and what did we want with him; he was told it made no difference. His name was not mentioned in the whole affair. They were told that they must surrender as prisoners. Booth wanted to know where we would take them, if they would give themselves up as prisoners. He received no satisfaction, but was told that he must surrender unconditionally, or else the barn would be fired. The parley lasted much longer than the time first set; probably a full half hour; but he positively declared that he would not surrender. At one time he made the remark. Well, my brave boys, you can prepare a stretcher for me; and at another time, Well, Captain, make quick work of it; shoot me through the heart. I knew that he was perfectly desperate, and did not expect he would surrender. We heard the whispering of another person—although Booth had previously declared that there was no one there but himself—who proved to be the prisoner Herold. Herold seemed to be trying to persuade Booth to surrender. After awhile, he sang out, Certainly, seeming to disdain to do so him-

self. Said he, Cap, there is a man in here who wants to surrender mighty bad. Booth said, O, go out and save yourself, my boy, if you can; and then he said, I declare before my Maker that this man here is innocent of any crime whatever, seeming willing to take all the blame on himself and trying to clear Herold. He was told to hand out his arms. Herold declared that he had no arms, and Booth declared that the arms all belonged to him, and that the other man was unarmed. He was finally taken out without his arms.

After Herold was taken out, Mr. Conger came round to the side of the barn where I was, and passing me, set fire to the hay through one of the cracks of the boards a little to my right; had previously said to Mr. Conger, and also to my commanding officer, that the position in which I stood left me in front of a large crack—you might put your hand through it—and I knew that Booth could distinguish me and others through these cracks in the barn, and could pick us off if he chose to do so. In fact, he made a remark to that effect at one time. Said he, Cap, I could have picked off three or four of your men already if I wished to do so. Draw your men off fifty yards, and I will come out, or such words. When the fire was lit, almost immediately after, Herold was taken out of the barn. As the flame rose we could distinguish Booth about the middle of the barn, turning toward the fire, either to put the fire out or else to shoot the one who started it; he was then coming toward me, a little to my right—a full front breast view; could have shot him

then much easier than when I afterward did, but as long as he was there, making no demonstration to hurt any one, I did not shoot him, but kept my eye on him steadily.

Finding the fire gaining upon him, he turned to the other side of the barn, and got toward where the door was, and as he got there I saw him make a movement toward the door; supposed he was going to fight his way out. One of the men, who was watching him, told me that he aimed the carbine at me. He was taking aim with the carbine, but at whom I could not say. My mind was upon him attentively to see that he did no harm, and when I became impressed that it was time I shot him, I took steady aim on my arm, and shot him through a large crack in the barn. When he was brought out I found that the wound was made in the neck, a little back of the ear, and came out a little higher up on the other side of the head. He lived until about 7 that morning; perhaps two or three hours after he was shot; did not hear him speak a word after he was shot, except a cry or shout as he fell. Others, who were near him and watching him constantly, said that he did utter the words which were published.

Recognize Herold among the accused as the man we took out of the barn; had never seen Booth before, but I felt sure it was Booth that I fired at; for when the men in the barn were summoned to surrender, the reply of the one who spoke was that his leg was broken, and that he was alone; knew also, from his desperate language, that he would not be taken alive.

Cross-examined. I judge that Herold was at first anxious to surrender, and upon Booth's refusing to do so, I rather thought he desired to stay with him; but I cannot say whether it was before or after that that Booth declared the man with him was innocent of any crime whatever.

As improper motives have been imputed to me for the act I did, I wish to say I twice offered Lieutenant Doherty, and once Mr. Conger, to go into the barn and take the man, saying that I was not afraid to go in and take him; it was less dangerous to go in and fight him than to stand before a crack exposed to his fire, where I could not see him, although he could see me; but I was not sent in; when the fire was lit, our positions were reversed; I could see him, he could not see me. It was not through fear that I shot him, but because it was my impression that it was time the man was shot; thought he would do harm to our men in trying to fight his way through that den, if I did not.

Capt. Edward Doherty. Had command of the detachment of the Sixteenth New York Cavalry that captured Booth and Herold.

The *Judge Advocate.* The circumstances of the capture having been fully detailed by other witnesses, will you state the part you took in the capture of the prisoner Herold, and all he said on that occasion?

Capt. Doherty. There had been considerable conversation with reference to the arms that Booth and Herold had inside of Garrett's barn.

We requested Booth and Herold to come out of the barn.

Booth at first denied there there was anybody there but himself, but finally said, Captain, there is a man here who wishes to surrender awful bad. Baker, one of the detectives, said, Let him hand out his arms. I stood by the door and said, Hand out your arms and you can come out. Herold replied, I have no arms. Baker said, We know exactly what you have got. I said, We had better let him out. Mr. Baker said, No, wait until Mr. Conger comes here. I said, No; open that door, directing a man to open the door; I will take that man out myself. The door was opened, and I directed Herold to put out his hands; took hold of his wrists and pulled him out of the barn; then put my revolver under my arm and ran my hands down him to see if he had any arms, and he had none; then said to him. Have you got any weapons at all about you? He said, Nothing at all but this, pulling out of his pocket a piece of a map of Virginia. Just at this time the shot was fired and the door thrown open, and I dragged Herold into the barn with me. Booth had fallen on his back. The soldiers and two detectives who were there went into the barn and carried out Booth. I took charge of Herold; and when I got him outside he said, Let me go away; let me go around here; I will not leave; I will not go away. Said I, No, sir. Said he to me, Who is that that has been shot in there in the barn? Why, said I, you know well who it is.

Said he, No, I do not; he told me his name was Boyd. Said I, It is Booth, and you know it. Said he, No, I did not know it; I did not know that it was Booth.

Took him and tied him by the hands to a tree opposite, about two yards from where Booth's body was carried, on the verandah of the house, and kept him there until we were ready to return. Booth in the meantime died, and I sewed him up in a blanket. Previous to this, had sent some cavalry for the doctor; and we got a negro who lives about a mile from there, with a wagon, and put the body on board the wagon, and started for Belle Plain.

Herold told me he met Booth by accident about seven miles from Washington, between 11 and 12 on the night of the murder; said after they met they went to Mathias Point, and crossed the Potomac there; did not mention the houses at which they stopped.

Cross-examined. Booth said, while in the barn, that he was the only guilty man, and that Herold was innocent. Herold made no resistance after he was captured.

Surgeon-General J. K. Barnes. Examined the body of J. Wilkes Booth after his death, when he was brought to this city. He had a scar upon the large muscle of the left side of his neck, three inches below the ear, occasioned by an operation performed by Dr. May of this city for the removal of a tumor some months previous to Booth's death.

THE TRIAL OF DAVID E. HEROLD FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

David E. Herold¹ was a young drug clerk in Washington, who in some way had made the acquaintance of Booth, and fascinated by the actor was ready to follow him anywhere. And as he was also acquainted with the country around Washington, he was selected by the assassin to accompany him in his flight. Herold was evidently fully cognizant of all the details of the coming tragedy and made his preparations accordingly. On the afternoon of the fatal day he went to a livery stable for a horse which he had arranged for earlier in the day, and on being asked by the foreman how late he would keep it, said he would be back at nine o'clock. He was very particular not only to get a good horse, but concerning the bridle and stirrups. When at ten he had not returned, the foreman became anxious, started out to find him, and came across him on Pennsylvania avenue. He called out: "Get off that horse, you have had it

¹ DAVID E. HEROLD was a native of Maryland. His father was for twenty years chief clerk of the navy yard store at the Navy Yard, Washington, dying in 1864, and leaving a family of one son and seven daughters. David, the son, took up pharmacy for a living and clerked at three different drug stores in Washington. "He was a stupid, insignificant looking young man, with slender frame and irresolute cowardly appearance. He had a narrow forehead, small, dark, hazel eyes, thick black hair and an incipient mustache. Although twenty-three years of age, he was more like a boy than a man. His conversation was light and trifling, and he was very easily persuaded and led. It is then no surprise that such a boy was only wax in the hands of a man of determined and resolute will, of pleasing and fascinating manners, such as John Wilkes Booth." Oldroyd, "Assassination of President Lincoln," *ante*, p. 34.

long enough," but Herold's only response was to put spurs to the animal and ride rapidly out of sight. The foreman returned to his stable, saddled a horse and started in pursuit, tracking Herold to the bridge over the river. He would have been permitted to cross, but not to return, as he would be compelled to have the password. This he could not get, so he gave up the chase and returned to the stable.²

At about half-past ten that night Booth crossed the river by the Navy Yard bridge; he was on horseback and alone, and the guard allowed him to pass on his statement that he was going to his home in the country. Less than ten minutes afterwards another man on horseback appeared and asked permission to cross; said his name was Smith, and that he was going home. The horse he rode was the one that Herold had hired in the afternoon at the livery stable, and the man was certainly Herold. He was allowed to pass, and in a few minutes another man came up, inquired about a horse like the one ridden by the second man, but did not cross.³ This was the foreman of the livery stable. Beyond the river a little later the two men were met by a pedestrian, one about half a mile behind the other and both riding very fast.⁴ These were beyond doubt Booth and Herold.

Herold must have caught up with his principal very soon after this, and finding him suffering from his broken leg, directed the flight to the house of Dr. Samuel Mudd, to obtain surgical aid, where they arrived at daybreak. Herold aroused the doctor from his sleep and they both carried Booth into the house where his leg was set, crutches provided for him and they left in the afternoon, Booth riding and Herold walking, leading his horse.⁵ Then follow several days in hiding by day and traveling by night, the United States troops in hot pursuit. Neither Herold nor Booth were

² John Fletcher, p. 89.

³ Silas T. Cobb, p. 90.

⁴ Polk Gardiner, p. 91.

⁵ Lieutenant Alex. Lovett, p. 93; William Williams, p. 95; Simon Gavican, p. 96.

seen any more by any of the witnesses on the trial until on Monday morning, ten days after the assassination, when Jett, a Confederate cavalryman and one of Mosby's command, going along the river at Port Conway, Va., with two companions, saw a young man get out of a wagon at the ferry, who came towards him and asked him (as they were all three in Confederate uniform) what company they belonged to, and where they were going. Reassured on this point the man went back to the wagon and returned with another on crutches. The young man (Herold) said his name was Boyd, that his brother was wounded at Petersburg, and asked that they be taken within the Confederate lines. There was some more conversation in the course of which Jett remarked that he could not take anyone he knew nothing about, when Herold replied: "We are the assassins of the President," and told Jett that their true names were Booth and Herold. Jett and his companions pointed out that they had no facilities for getting them south, as the country was overrun with Union soldiers, but they would do what they could to hide them, eventually getting them to the Garrett farm, where Booth was killed and Herold captured.⁶

That Herold had been long intimate with Booth and the other conspirators is very clear. He was taken by him to Canada on one of the visits made by Booth to consult with the active partisans of the Confederacy who had found an asylum there;⁷ he was a visitor at Mrs. Surratt's house in Washington; he knew Payne; once when Herold in the company of Atzerodt had been to see Booth act at a theater, the two were later found with Booth in a restaurant, drinking and in close conversation;⁸ he came to Surratt's tavern in Surrattsville with John H. Surratt and Atzerodt, on which occasion Surratt left with the barkeeper two carbines which he told him to keep for him,⁹ and on the night of the tragedy,

⁶ Willie S. Jett, p. 97.

⁷ Dr. James B. Merritt, p. 54.

⁸ Louis J. Weichmann, pp. 220, 433.

⁹ John M. Lloyd, p. 91.

or the night before, Herold came into a restaurant in Washington, asking where Booth could be found.¹⁰

Herold had little to say in his defense. His lawyers tried to prove an alibi as regards his visit to Canada with Booth; they argued that the proof did not show that he was at any time on the Friday night, near enough to the assassin to give him any assistance in the perpetration of the murder, and they called attention to Booth's statement in the Garrett barn that he only was guilty and that his companion was innocent.¹¹

But outside the evidence as to the Canadian alibi they produced not a single witness, except a few neighbors and acquaintances, who swore that Herold was a trifling and unreliable youth, easily influenced and very easily persuaded and led.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

MAJOR-GENERAL DAVID HUNTER,^{11a} *President*.¹²

May 13.

The *Prisoner*, David E. Herold, who was charged with aiding and abetting in the murder of President Lincoln and aiding and abetting Booth in his escape, having heretofore pleaded *not guilty*,¹³ the taking of evidence began today.

Judge Advocate-General *Holt*¹⁴ and Assistant Judge-Advocate *Bingham*¹⁵ and *Burnett*,¹⁶ for the Government.

Frederick Stone,¹⁷ for the prisoner, *David E. Herold*.

¹⁰ Peter Tatavul, p. 76.

¹¹ Boston Corbett, p. 102.

^{11a} See page 34.

¹² For the other members of the Court, see *ante*, p. 33.

¹³ See *ante*, p. 44.

¹⁴ See *ante*, p. 35.

¹⁵ See *ante*, p. 35.

¹⁶ See *ante*, p. 36.

¹⁷ See *ante*, p. 42.

The following witnesses testified as to the connection of the prisoner with the conspiracy :

Dr. James B. Merritt, ante, p. 54.

Peter Tatavul, ante, p. 76.

John Fletcher, ante, p. 89.

Sergeant Silas T. Cobb, ante, p. 90.

John M. Lloyd, ante, p. 91.

Lieutenant Alex Lovett, ante, p. 93.

William Williams, ante, p. 95.

Simon Gavacan, ante, p. 96.

Joshua Lloyd, ante, p. 96.

Willie S. Jett, ante, p. 97.

Everton J. Conger, ante, p. 98.

Sergeant Boston Corbett, ante, p. 102.

Captain Edward Doherty, ante, p. 104.

THE WITNESSES FOR THE DEFENSE.

Captain Eli D. Edmonds. Know Herold, one of the prisoners; saw him at his home in Washington, on 20th and 21st of February.

Francis S. Walsh. Reside in Washington. Have known prisoner Herold since he was a boy; am a druggist and employed Herold as a clerk eleven months; know of nothing objectionable in his character. He was light and trifling, more like a boy than a man, but never saw any fault in his moral character. He was temperate and regular in his hours. Easily persuaded, and led, more than is usual with young men of his age; boyish in every respect. Suppose him to be about twenty-two years of age.

James Nokes. Live in Washington. Have known Herold from his birth, about twenty-three years. There are seven

children living and he is the only boy. Looked upon him as a light and trifling boy; very little reliability to be placed in him; more easily influenced by those around him than the generality of young men of his age; all his conversation light and trifling.

William H. Keiloltz. Have lived next door to Mr. Herold for 13 years, and know prisoner. Consider his character very boyish. See him often with boys; he is very fond of their company and never associates with men. He is fond of sport, gunning, dogs, etc.

Emma Herold. Am sister of David E. Herold; know my brother was home on 15th of February, and on 19th of February. He was also at home between those days.

Mrs. Mary Jenkins. Know prisoner Herold. He was at my house on 18th of February last

and received my rent. Have his receipt of that date to show it.

Mrs. Elizabeth Potts. Know the accused Herold. Cannot say whether he was in Washington on 20th of last February, but I know he was there on the 19th, for he came to my house for his money. Have his receipt for the money, dated the 20th.

Dr. Charles W. Davis. Have known Herold from early boyhood, a great part of the time next door; he is a boy; he is trifling and always has been; very easily persuaded and led.

Nature has not endowed him with as much intellect as the generality of people possess.

Dr. Samuel A. H. McKim. Reside in Washington; have known Herold for the last six years; consider him a very light, trivial, unreliable boy; would never let him put up a prescription of mine if I could prevent it, feeling confident he would tamper with it if he thought he could play a joke on anybody. In mind, consider him about eleven years of age.

MR. STONE, FOR THE PRISONER.

Mr. Stone. May it please the Court: At the earnest request of the widowed mother and estimable sisters of the accused, I have consented to act as his counsel in the case now before the Court.

It is a source of some embarrassment to the counsel for the accused that the Judge Advocate General has seen fit not to open this case with a brief statement of the law upon which this prosecution is founded. It would have been a great, and, as he thinks, proper assistance to the accused and his counsel to have known with more accuracy than is set out in the charge, the special offense for which he is arraigned. In the absence of such opening statement, the accused can only discuss the law on which he supposes the Judge Advocate to rely.

While the counsel for the accused does not, and cannot, concede the question of jurisdiction, it is not proposed by him to discuss the question of the jurisdiction of this Court over the accused in this case, except so far as may be necessary incidentally in discussing the effect of General Order No. 141. The question of the general jurisdiction he will leave in abler hands.

But, supposing this Court should be entirely satisfied that they have jurisdiction, another, and, as the counsel for the

accused thinks, a more important question arises; and that question is: What is the law governing the several offenses with which the accused stands charged, and what is the law prescribing the punishment thereof? I shall first consider what is the law governing the case as to the crime and the punishment, upon the hypothesis that martial law generally was in force in the District of Columbia on the 14th of April, 1865, and still so continues in force; and I shall, in the second place, consider whether martial law did, in fact, exist within the District of Columbia on the 14th of April, and does now exist, and to what extent.

In time of peace, the civil law is administered by civil tribunals, whose mode of procedure and jurisdiction are clearly defined; in time of war, justice is administered in the enemy's country, occupied by the belligerent, and also in that part of the belligerent's own country which is under martial law, by military commissions, according to a system of jurisprudence sometimes called the common law of war. In this changed condition of things, the military commission supersedes the civil tribunal, and the common law of war supersedes the civil law; but the rules of the common law of war are as clearly defined as are those of the civil law, and the jurisdiction of the military commission is as accurately defined as the jurisdiction of the civil tribunal. The common law of war determines the manner in which a military commission, charged with its administration, shall be organized, the mode in which proceedings before it shall be conducted, the rules by which it shall determine questions of evidence arising in the course of the trial, and the penalty to which it shall subject the accused upon conviction.

By this law a military commission must be organized in the manner in which courts-martial are organized, and its proceedings must conform to the manner of proceedings before courts-martial, and be conducted according to the rules prescribing the mode and manner of conducting proceedings before these tribunals.

By the same common law of war, the jurisdiction of a

military commission as to persons and offenses is also limited and defined. A military commission possesses no power to try a person in the army or navy of the United States for any offense provided for in the articles of war. It has no jurisdiction in the case of a soldier charged with disobedience of orders, desertion, etc. Offenses of this nature, and committed by persons subject to military law, are expressly cognizable before the military courts created by that law, and known as courts-martial. If, in time of peace, a soldier commit an offense against the civil law not provided for in the articles of war, he is surrendered up to the civil jurisdiction to be tried; and if he commit such an offense in time of war in a district subject to martial law, he will be tried by military commission, which, in such district, supersedes the civil courts in the administration of justice. It is, therefore, apparent that everything in the organization of the military commission, or in the manner of conducting proceedings before it, from the filing of the charges and specifications, down to the final decision of the court, and its jurisdiction as to persons, is not entirely within the discretion of the Commander-in-Chief or of the commission itself, but is subject to the established rules and principles of the common law of war, which calls it into existence, to administer justice according to those rules and principles.

What are these rules and principles? They are clearly indicated in article 6 of General Order No. 100 (already in evidence in this case), which is as follows:

“All civil and penal law shall continue to take its usual course in the enemy’s places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all functions of the hostile government—legislative, executive or administrative—whether of a general, provincial or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation, of the occupier or invader.”

This order proves that, in the enemy’s country, under martial law, the civil and penal law shall remain as the rule

of conduct and law of the people, unless interrupted by express command. In the absence of any command interrupting the operation of the civil and penal law, what is the law over that portion of the enemy's territory to which this order refers? Martial law certainly prevails, because the territory referred to is described as territory under martial law. The civil and penal law of the country also prevails, because the order expressly declares that it shall continue. It is apparent, therefore, that two systems of jurisprudence prevail at the same time on the same territory; one, the system which martial law establishes, and known as the system of the common law of war, and the other, the system in force over the territory at the time of its conquest. But the latter system, although prevailing, cannot be enforced, except by the conqueror, for the article further provides that all the "functions of the hostile government, legislative, executive or administrative, whether of a general, provincial or local character, cease under martial law, or continue only with the sanction, or if deemed necessary, the participation, of the occupier or invader."

Judicial power is one of the functions of government, and is specifically designated in the order by the word "administrative." All the functions of the government, including the administrative functions, must cease under martial law; but still, by the terms of the order, the civil and penal law shall continue and take its course, and be administered. By whom? By what tribunals? The civil courts can no longer exercise functions of their administering the law, and military courts administer, not civil and penal law, but military law and the common law of war. Article 13 of the order referred to says:

"Military jurisdiction is of two kinds: first, that which is conferred and defined by statute; second, that which is derived from the common law of war."

How, then, can a military jurisdiction administer civil and penal law? There is but one solution to the difficulty, and it is in the application of the principle lying at the

foundation of the common law of war and determining the system of jurisprudence known by that name, and it is this: That where, by virtue of the existence of martial law, the common law of war is required to be administered, the civil and penal law of the territory subject to martial law becomes part of that common law of war, and, as such, is to be administered by military tribunals, under military modes of procedure, with the same effect in securing the rights of litigants and the punishment of crimes as if administered by civil tribunals, according to the modes provided and adopted in the civil courts.

I do not mean to contend that the code of the common law of war is exclusively made up of the civil and penal law of the country which has become subject to martial law, but that the civil and penal law becomes a part of the common law of war in all cases to which it is applicable. Under martial law many acts become crimes which are innoxious and innocent in time of peace and under the civil code, and which are not, therefore, provided against in the civil and penal law.

In regard to the trial of persons arraigned for any of this class of crimes, the Commission must conform in its action, as nearly as may be, to the authenticated precedents of the common law of war, and administer justice with sound discretion; but in regard to the trial of persons arraigned for offenses created and recognized by the civil and penal law, the Commission must administer, as part of the common law of war, the civil and penal law as it is written. The civil and penal law becomes part of the common law of war by the fact of the inauguration of martial law.

It is true the operation of this principle may be interrupted by order of the occupying military power, in the exercise of an authority derived from, and limited by, the military necessity; but the right to interrupt the operation of the principle by special order, shows that the principle continues in force until the interrupting order is promulgated. It may, however, be contended that a special order

in such case is not necessary according to the laws of war, and would not be required except for the mandate of section 6, above quoted from. If this is true, then the principle for which I have contended should be stated with a qualification, and the civil and penal law of the country subject to martial law becomes a part of the common law of war, except as to such parts thereof as military necessity requires should be suspended. Section 3 of General Order No. 100 provides as follows:

“Martial law in a hostile country consists in the suspension, by the occupying military authority, of the civil and criminal law, and of the domestic administration and government of the occupied place or territory, and the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension or dictation.”

According, then, to this section of the order, the civil and penal law is suspended only as far as military necessity requires a suspension.

The rule, therefore, is that the civil and penal law shall continue in force, and the exception is as to such parts thereof as military necessity may require to be suspended. This necessity, as is well understood, is not a condition in which the suspension of the civil and penal law would be more convenient to the occupying military power, or would simply gratify the caprice of the commander, but a condition in which such suspension is imperatively demanded to meet the exigencies of war, and absolutely required to conduct that war successfully. Military necessity is thus defined by section 14 of General Order No. 100:

“Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.”

That portion of the civil and penal law suspended in the enemy's country subject to martial law, on the ground of military necessity, must, therefore, be such portions of said law as it is indispensable to suspend for securing the ends

of the war, and which it is also lawful to suspend according to the modern law and usages of war.

Sections 3 and 6, above quoted, of General Order No. 100, by their terms, refer only to the "enemy's country," but they indicate the effect of martial law upon the system of jurisprudence to be administered wherever martial law prevails. That effect will be greater or less in modifying or suspending the civil and penal laws of the various territories that may be subject to martial law, according to the measure of the necessity existing in each.

Section 5 of General Order No. 100 provides as follows:

"Martial law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where active hostilities exist, or are expected, and must be prepared for. Its most complete sway is allowed even in the commander's own country, when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion."

It is apparent, therefore, that the effect of martial law in modifying and changing the civil and penal code, or the civil administration of the district or territory in which it prevails, depends upon the military necessity growing out of the condition of things existing in such territory or district. And if in any portion of the conquered and occupied territory of the enemy the civil and penal law is allowed to continue, certainly in such portions of the commander's own country as may be declared subject to martial law, the civil and penal law should not be interrupted, unless some extraordinary and overwhelming necessity arises to justify it.

I will not enter into the inquiry suggested by section 5, quoted above, as to whether or not martial law can prevail in the commander's own country in any case other than that referred to in the article, to-wit: when face to face with the enemy, and to which condition this article would seem to limit the rightful exercise of that law. But conceding that it may prevail within the commander's country, where hostile armies are not arrayed against each other on its soil,

and war is not in actual progress, what, under such circumstances, is its effect in interrupting or suspending the civil and penal law? I concede, for the purpose of this argument, that it establishes the common law of war as suspending the civil and penal law, that it substitutes a military tribunal for civil courts, and the summary process of military arrests for the ordinary mode and form of civil arrests; but, when the military court is convened and organized, what law is it required to administer? The answer is obvious: it is to administer the common law of war. What part of the civil and penal law has been excluded from that common law of war and suspended under the force of a necessity making such suspension indispensable for securing the ends of the war?

This Commission is sitting not only in the commander's own country, but in the capital of that country. Before it met, the last hostile gun of the war had been fired, a thousand miles away. During its session 200,000 veterans have returned from the field, and passed in review in sight of the windows of this court room, their faces homeward turned, their swords sheathed, their work accomplished. No enemy now remains in arms against the Government of the country; but the war is over, and peace restored. Again I ask, what military necessity renders a suspension of the civil and penal law of the United States, in the capital of the United States indispensable for securing the ends of war?

The second inquiry which I propose to make before this Commission, is, whether martial law did exist on the 14th of April, 1865, in the city of Washington, and if so, to what extent, and whether it does now exist? The only evidence before the Commission of the existence of martial law in the city of Washington, on the 14th of April last, is the proclamation of the President of the United States, issued in September, 1862. That proclamation is in these words:

"That during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders

and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission."

It appears clearly, from General Order No. 100, that martial law is not, if I may use such an expression, an unbending code; that it can be made, in the discretion of the commander, more or less stringent, as the exigencies of the case may require. It also is apparent, from the same General Order, that martial law in the commander's own country, must exist by virtue of some proclamation or announcement. To what extent, then, does it appear that martial law was declared by the proclamation of the President of September, 1862, and which is sometimes designated as General Order No. 141? The President of the United States, if he had the right to issue the proclamation at all, had the right to limit its duration and the persons to whom it should apply. In the exercise of this constitutional right, the President did both; he limited the time of existence of martial law, as well as the persons to whom it is applied. By the terms of that order declaring martial law, the existence of that martial law is made to depend entirely on the existence of the rebellion. It required no order to annul or revoke it; it carried, if I may use such an expression, its own death-warrant upon its face. "During the existing insurrection, and as a necessary measure for its suppression," persons guilty of affording aid and comfort to the rebels are liable to be tried by courts-martial or military commission. Had the President of the United States intended that the crime of aiding the insurgents by giving to them aid and comfort, which occurred during the rebellion, should be punished after the rebellion had ceased, apt words were at hand so to express the order; but the order is not so expressed; both the crime and the punishment are made to depend upon the existence of the rebellion.

That order, too, only touches a particular class of crimes. It does not touch the crime of murder, of an assault with intent to kill, of aiding or abetting in a murder, or aiding or abetting the escape of a murderer from justice, or of a conspiracy to murder. The same facts make the crime, and the same punishment follows conviction, and the same mode of punishment exists after the issue of that order as did before.

Loyal civil courts in the city of Washington have been constantly, since the issue of that proclamation, in session, with full and ample power and authority to try the crimes of murder, of conspiracy to murder, of assault with intent to kill and murder, and of aiding and abetting in the escape of a murderer. The jurisdiction of the civil courts over all such crimes last above enumerated has been left untouched and undisturbed by that order. There has been no hour since the issue of that proclamation that the Supreme Court of the District of Columbia has not had full and ample powers to try every crime enumerated in the charge in this case. Upon the suppression of the rebellion, that proclamation expired, and became from that and continues to this hour a dead letter upon the statute book, and that martial law which it inaugurated can never again exist in the capital of the country until the Commander-in-Chief, in the exercise of his constitutional powers, shall again declare it.

But supposing the proclamation to be still in force, supposing it to be as valid this day as it was on the day it was issued, still the fact remains that it only applies to one single class of persons and to one single crime, and that crime is aiding and abetting the rebellion. And if this Commission should conclude that General Order No. 141 is still in force, and that they derive their power and authority to hear and determine these cases by virtue of that general order, still the fact remains that they have only the power under that order to try the naked crime of aiding and abetting the rebellion.

The charge in this case consists of several distinct and

separate offenses embodied in one charge. The parties accused are charged with a conspiracy in aid of the rebellion, with murder, with assault with intent to kill, and with lying in wait. It is extremely doubtful from the language of the charge and the specification, under which of the following crimes the accused Herold, is arraigned and now on his trial, viz.:

I. Whether he is on trial for the crime of conspiracy to overthrow the Government of the United States, as punishable by the act of the Congress of the United States, as passed the 31st of July, 1861; or,

II. Whether he is on his trial for giving aid and comfort to the existing rebellion, as punishable by the act of Congress passed the 17th of July, 1862; or,

III. Whether he is on trial for aiding and abetting the murder of Abraham Lincoln, President of the United States.

His counsel well understands the legal definition of the three crimes above mentioned, but does not understand that either to the common law or to the law of war is known any one offense comprised of the three crimes mentioned in this charge. He knows of no one crime of a conspiracy to murder and an actual murder, all in aid of the rebellion, distinct and separate from the well-known and defined crimes of murder, of conspiracy in aid of the rebellion, or of giving aid and comfort to the rebellion as defined by the acts of Congress. It is extremely doubtful, from the language of this charge, whether the murder of the President of the United States is not referred to as the mere means by which the conspirators gave aid and comfort to the rebellion—whether it was not merely the overt act by which the crime of aiding the rebellion was completed.

If the crime of aiding and abetting the rebellion, as laid in the charge and specification, is only laid as the inducement to the crime of murder, then the crime as laid in the charge and specification does not come within the terms of the proclamation of September, 1862. It is the actual crime,

and not the motives which induced it, that confers the jurisdiction. In the first general specification of the charge we find the following words used: "And by the means aforesaid" (referring to the murder of the President, Vice-President, the Secretary of State, and the Lieutenant-General), "to aid and comfort the insurgents in armed rebellion against the United States as aforesaid, and thereby to aid in the subversion and overthrow of the Constitution and laws of the United States." In that sentence the murder of the President of the United States and the rest of the crimes aforesaid are merely spoken of as the means, and not as the end.

The ambiguity in the charge and the first general specification is not relieved by the special specification against the accused, Herold. The special specification against him uses these terms:

"And in further prosecution of the said unlawful, murderous and traitorous conspiracy, and in pursuance thereof, and with the intent aforesaid," etc.

The special specification then goes on to charge Herold with two matters: first, with aiding and abetting in the murder of the President of the United States; and second, with aiding and abetting Booth in his escape from justice after the murder.

The language of the charge and of the general specification, as well as of the special specification, leaving it doubtful whether the accused is charged with all three or any one, it is necessary for his counsel to present his defense to all three of the crimes mentioned in the charge and specification.

First, as to the crime of conspiracy. What evidence is there of the accused, Herold, having conspired to murder the President, or to aid the rebellion and overthrow the Constitution and laws of the United States? The evidence upon that point consists of but very few facts.

The first that it is necessary to notice is the testimony of

Weichmann, who says that he saw Herold once at Mrs. Surratt's house since he went there to board, which was in November, 1864. It is hardly possible that this Commission will take a single visit of a young man to a house, where there were both young men and young ladies, as evidence of complicity in a conspiracy of so grave and heinous a character, especially as the same witness deposes that Herold was a previous acquaintance of the Surratts, as he had seen him before they moved to town, down in the country, at a serenade there some eighteen months before.

The same witness (Weichmann) also deposes that once in the winter of 1865, he, Holahan, Atzerodt, and this boy Herold went to the theater to see Booth play; that, on leaving the theater and going down the street, he (the witness, Weichmann) and Holahan going in advance, they found that they had outwalked the other three of the party; that the witness (Weichmann) returned, and found Booth, Atzerodt, and Herold in a restaurant, and, to use his expression, "in close conversation near a stove," and upon his going in they invited him to take a drink. If the fact of two persons going to a theater to see a popular play, and leaving that theater with the addition of a third, and stopping at a restaurant and taking a drink, or standing all three as (in the witness' opinion) in confidential conversation, is an evidence of conspiracy, probably half of the population of Washington city during the winter could be convicted on the same testimony.

The only other testimony is that of John M. Lloyd, who deposes that John Surratt and Atzerodt, some weeks before the assassination, passed his house, and that on their return Herold was with them, Herold being in a buggy alone; that they stopped at his house and took drinks; that John Surratt took him (Lloyd) out by himself from Herold, and out of Herold's sight and hearing, and handed him (Lloyd) two carbines. There is no evidence whatever in Lloyd's testimony that Herold had the most remote knowledge that Surratt had given Lloyd the carbines.

There is one other point which was given in evidence by the Government, and that is the testimony of the witness Taltavull, the restaurant keeper, who deposes that one night, either Friday, the night of the assassination, or Thursday, the night before it, Herold came into his restaurant and asked if Booth had been there.

Fifty people could probably be convicted if facts like these were sufficient to convict; but they do not give, either separately or collectively, the slightest evidence that this boy Herold ever conspired with Booth, and others in aid of the rebellion, and for the overthrow of the Government of the United States. They show nothing that might not have occurred to any one, perfectly consistent with the most perfect innocence. The term "confidential communication" is the witness' (Weichmann's) own construction. He meant only to say that the three were talking together—that after leaving the theater, where they had been, the three stopped and went into a restaurant, and that he found them there talking together near a stove. So much for the conspiracy.

In the *special* specification there are two things charged. The first is the murder of the President of the United States; the second, aiding and abetting Booth in his escape from justice after the murder. An accessory after the fact is thus defined: "An accessory after the fact is one who, when knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon." There is no reasonable doubt, from the evidence in this case, that the accused, Herold, was guilty of aiding and abetting Booth in his escape from justice. It is not the object of the counsel for the accused either to misrepresent the law (which would be useless in the presence of the able and learned Judge Advocates who are conducting this case on the part of the Government), or to attempt to misrepresent the facts that have been disclosed in the evidence, which would be equally useless before this Court. Of the fact that this boy, Herold, was an aider and abettor in the escape of Booth, there is no rational or reasonable doubt. He was clearly guilty of that

crime, and must abide by its consequences. But the accused, by his counsel, altogether denies that he was guilty of the murder of Abraham Lincoln, President of the United States, or that he aided and abetted in the murder of Abraham Lincoln, President of the United States, as set forth in the specification and the charge.

Herold is charged in the charge with the murder of the President. It is shown, as clearly as the sun shines, that he did not do the murder with his own hands, that he did not strike the mortal blow; and the only question that can arise under the charge and specification, and the evidence, in this cause, is whether he was such an aider and abettor as would make him equally guilty with the party who did strike the blow; and in order to arrive at a satisfactory conclusion whether he did so aid and abet in the murder of the President of the United States, it is necessary to examine what will constitute an aider and abettor.

An aider and abettor, termed in the law a principal in the second degree, is thus defined:

"Principals in the second degree are those who are present aiding and abetting at the commission of the fact. To constitute principals in the second degree there must be, in the first place, a participation in the act committed, and, in the second place, presence, either actual or constructive, at the time of its commission." Wharton's American Criminal Law, 4th edition, Sec. 116.

What is that "actual or constructive" presence is thus explained in the same book, section 124: "It is not necessary that the party should be actually present, an ear or eye-witness of the transaction. He is, in construction of law, present aiding and abetting if, with the intention of giving assistance, he be near enough to afford it should the occasion arise."

Now, did the accused, in the language of the law, participate in the act? Did he strike the illustrious victim the fatal blow? Did he point or hold the weapon? Did he open the door of that accursed box? Did he bar that outer door? Did he clear the passage of the theater? Did he stop or at-

tempt to stop pursuit? Was he even in the theater at the time the fatal deed was done? To all these questions the evidence answers, distinctly and emphatically, no.

As to the second branch of the definition of a principal in the second degree, was he constructively present? He was not actually present, as we have seen above. Was he, then, constructively present? That is to say, in the language last quoted from Wharton, was he, "with the intention of giving assistance, near enough to afford it, should the occasion arise?" What says the evidence on this point? John Fletcher, the only witness who mentions Herold at all on the 14th of April, 1865, says that he saw Herold at twenty-five minutes past ten o'clock that night, riding on horseback slowly, on Pennsylvania avenue, near Willard's hotel, coming from the direction of Georgetown; that his horse seemed to be somewhat, though not very, tired, and gave evidences of having been ridden. The main portion of the testimony places the assassination of the President at fifteen minutes after ten o'clock. That the assassination took place in the midst of a crowded theater, there is no controversy or dispute.

Now, what possible assistance could the accused have rendered to a murder committed in Ford's theater about the time that he was riding slowly down the middle of Pennsylvania avenue? No living man saw Herold nearer Ford's theater, on that fatal night, than the witness, Fletcher. Every circumstance attending that dreadful act has been minutely detailed to this Court by witnesses who were present. What possible assistance could the accused, Herold, have rendered to the murderer? The only time that he was seen on that night, and about the time of the murder, he was fully half a mile from the scene of the dreadful tragedy.

In order to convict him of being near enough to give aid, should the occasion arise, the Court must be satisfied of the nature of the aid that he was able to give. What aid could he have possibly given? Was he near enough to hand Booth another pistol in case the first missed fire? Was he

near enough to prevent assistance being given to the lamented President in case the first shot did not take effect? Was he in a situation to give the murderer any aid in his escape from the theater? As far as this testimony discloses, Herold was entirely unarmed. Can the Court conceive any possible assistance that, under these circumstances, he, on the outside of the theater, in the middle of the principal street of Washington, half a mile from the theater, about the time the murder was committed, could have given Booth in the murder, or even in his escape?

To constitute an aider and abettor, the accused must have been in a situation to render aid. Booth might have supposed him to be in a situation, the accused might have supposed himself even to be in a situation to render aid; but it is not sufficient, unless the Court are satisfied, from the evidence brought before them, that he was actually and positively in a situation where he could have rendered aid in the commission of the act; and, in support of this position, I refer to 9 Pickering's Reports, p. 496:

"To be present aiding and abetting the commission of a felony, the abettor must be in a situation where he may actually aid the perpetrator. It is not enough that he is at a place appointed, where the perpetrator erroneously supposes he might render aid."

But it may be argued that the accused said to Jett, a witness produced from the State of Virginia, "We are the assassins of the President." If the Court will examine, they will find that this declaration was qualified one moment after it was made; that, pointing to Booth, the accused said, "Yonder is the assassinator." Herold is on trial for his acts, and not for his words. It is shown conclusively, in this case, that Booth, and not Herold, assassinated the President. If Jett heard accurately the words used by Herold, taken in connection with the facts disclosed to this Court, they only disclosed to Jett the character of the party. Declarations are only a means to arrive at the true character of acts. They must be taken in connection with the facts of every case; and it is clear, from every particle of

testimony in this case, that Herold was not the "assassinator" of the President; and even if he used the words as repeated by Jett, the meaning is clear enough; he meant to designate and point out to Jett, the witness, the character of the party that he was with.

But it may be urged that the flight of Herold is evidence of his guilt. It is true that flight, unexplained, is always regarded as evidence of guilt, but not conclusive evidence.

"By the common law, flight was regarded so strong a presumption of guilt, that, in cases of treason and felony, it carried forfeiture of the person's goods, whether he was found guilty or acquitted. These several acts, in all their modifications, are indicative of fear, which, however, may spring from causes very different from that of conscious guilt. Mr. Justice Abbott, on the trial of Donnall for the murder of Mrs. Downing, observed, in his charge to the jury, that a person, however conscious of innocence, might not have the courage to stand trial, but might, though innocent, think it best to consult his safety by flight." Wharton, 4th ed., sec. 714.

But what guilt in this case is the flight of Herold evidence of? He is found with Booth, and his flight in this case is not only evidence, but constitutes the guilt that he has acknowledged; it constitutes the guilt of his aiding in the escape of Booth, but no more. It by no means follows, because he aided Booth to escape, that he aided him to kill the President. It is bad reasoning to conclude that because he was guilty of one crime he was guilty of others.

But it may be asked, why did he leave in the dead hour of the night with a murderer? A slight glance at the relative character of the two men may explain this difficulty. John Wilkes Booth, as appears from all the evidence in this case, was a man of determined and resolute will, of pleasing, fascinating manners, and one who exercised great influence and control over the lower orders of men with whom he was brought in contact. He was a man of means, quite a prominent actor, fine in personal appearance and manners, and an adept in athletic and manly exercises. All the force of his mind, all his means, and his time in the winter of 1865, were devoted to get agents to aid in his desperate en-

terprise. In his search he met with Herold, then out of employment, and he at once marked him for his own.

Who is Herold, and what does the testimony disclose him to be? A weak, cowardly, foolish, miserable boy. On this point there is no conflict. Dr. McKim, who probably knew him best, and in whose employ he had been, declares that his mind was that of a boy of eleven years of age, although his age actually was about 22—not naturally vicious, but weak, light, trifling, easily persuaded, good tempered, ready to laugh and applaud, and ready to do the bidding of those around him. Such a boy was only wax in the hands of a man like Booth.

But though Booth exercised unlimited control over this miserable boy, body and soul, he found him unfit for deeds of blood and violence; he was cowardly; he was too weak and trifling; but still he could be made useful. He knew some of the roads through Lower Maryland, and Booth persuaded him to act as guide, foot-boy, companion. This accounts for their companionship.

There is one piece of evidence introduced by the Government that should be weighed by the Commission. It is the declaration of Booth, made at the time of his capture: "I declare before my Maker, that this man is innocent." Booth knew well enough, at the time he made that declaration, that his hours, if not his minutes, were numbered. In natures the most depraved there seems to be left some spark of a better humanity, and this little remnant of a better nature urged Booth to make that declaration while it was yet time to do so. What did he mean by that declaration? Not that Herold was not guilty of the act of aiding and assisting him (Booth) to escape; but what he did mean, and what he tried to convey, was, that Herold was guiltless of the stain of blood being upon his hands, either as an accessory before the fact to the murder of the President, or as an aider and abettor in that murder, or any other deed of violence. That is what he meant.

I should mention here, what I might more properly, per-

haps, have mentioned in another place, that I think it has been made clear from the testimony, that Dr. Merritt, who said Herold was in Canada between the 15th and 20th of February last, was manifestly mistaken. Merritt was positive as to the location of the time, and if he did not see him there during that time, he did not see him at all. He did not profess to have been introduced to him, or to have had conversation with him, nor was he pointed out to him, as Merritt says, by name; but the sum of his testimony is, that between the 15th and 20th of February last, a man was pointed out to him whose name was Harrison, and who, he thinks, was the prisoner Herold. It appears, from the testimony of his little sister, as well as that of Mrs. Jenkins, that Herold was at home on the 15th of February; it appears conclusively, from the testimony of Mrs. Potts, that he was at home, as she paid him some money and took his receipt, on the 18th of February; and it appears equally conclusive from the testimony of Captain Edmonds, an officer in the navy, that he was at home on the 20th of the same month, showing clearly that Herold was not in Canada; that Dr. Merritt was mistaken; it was some other man; more than probable Surratt, who was called very frequently by his middle name of Harrison.

It has been intimated by one of the Assistant Judge Advocates that "where parties are indicted for a conspiracy and the execution thereof, it is but one crime at the common law; and that, upon all authority, as many overt acts in the execution of that conspiracy as they are guilty of may be laid in the same count." To this doctrine the accused cannot assent. The crime of conspiracy is thus defined by Mr. Sergeant Talfourd:

"The offense of conspiracy consists, according to all authorities, not in the accomplishment of any unlawful or injurious purpose, nor in any one act moving toward that purpose, but in the actual concert and agreement of two or more persons to effect something, which, being so concerted and agreed, the law regards as the object of an indictable conspiracy." Per Bayley J., 2 Barnewall and Alderson, 205.

If this decision is correct—and of its correctness I think there can be no doubt—the crime of conspiracy becomes complete upon the concert and agreement. The overt act is not essential to the completion of the crime.

In Wharton's American Criminal Law, section 2,335, the law is thus set out:

"It is usual to set out the overt acts, that is to say, those acts which may have been done by any one or more of the conspirators in pursuance of the conspiracy, and in order to effect the common purpose of it; but this is not requisite, if the indictment charge what is in itself an unlawful conspiracy. The offense is complete on the consummation of the conspiracy and the overt acts, though it is proper to set them forth, may be either regarded as matters of aggravation, or discharged as surplusage."

It seems to me clear from those authorities that the conspiracy to commit a crime, and the actual commission of that crime, are nowhere regarded in the eye of the law as constituting but one offense. They do, in fact, constitute two separate and distinct offenses, and the party may be indicted for them both or for either of them separately. The prevailing doctrine in this country is, that where the conspiracy is to commit a felony, if the felony is afterward committed, the conspiracy merges in the felony, conspiracy being regarded by all the writers as a misdemeanor merely.

Again, if upon a conspiracy being entered into to commit murder, the murder is afterward actually committed by one of the conspirators, it is not a conclusion of law that the murder is committed also by the other co-conspirator.

Another principle here comes in. To the crime of murder there may be principals and accessories before and after the fact. A co-conspirator may be an accessory before the fact, but it does not follow because he is a co-conspirator, that he is an accessory before the fact. What is an accessory before the fact, is thus defined:

"An accessory before the fact is one who, though absent at the time of the commission of the felony, doth yet procure, counsel, command, or abet another to commit such felony."

Now, where is the evidence that Herold procured, counseled, commanded or abetted Booth to assassinate the President of the United States?

I beg leave to refer the Court to the case of the Commonwealth v. Knapp, 9 Pick. 518 (see 7 Am. St. Tr.):

"The fact of the conspiracy being proved against the person is to be weighed as evidence in the case having a tendency to prove that the prisoner aided, but it is not in itself to be taken as a legal presumption of his having aided unless disproved by him. It is a question of evidence for the consideration of the jury."

Should, then, the Court determine that Herold was one of the conspirators, it is not to be taken of itself as any conclusive evidence that he aided or abetted in any manner the murder.

This case is being tried by the rules of evidence as known to the common law and the general principles of that law applicable to criminal cases. I beg leave to call the attention of the Court to one of the most important and most thoroughly established rules of the common law in the investigation of all crimes, and that rule is this: That whenever upon any question there should arise in the minds of the investigating tribunal, any reasonable doubt, the accused should have the benefit of that doubt. This rule has met with the unqualified approbation of every judge in England and America whose name adorns the judicial history of either country. While I do not contend that the Court should for a moment examine the record for the purpose of raising capricious doubts, still, whenever the record does present a case of reasonable doubt, I insist that the accused shall have the benefit of that doubt. Apply this principle to the main charge in this case. Can the Court say, from the evidence before them, that on the night of the 14th of April, 1865, the accused, Herold, was in a situation where he could render aid in the actual murder of the President? Taking into consideration the mode and manner of the execution of that murder and Herold's position from the time of its commission, it seems to me that it is almost, if not

quite, clear that he was not in a situation where he could render such aid. Can the Court say, beyond a reasonable doubt, then, that he was an accessory before the fact? Can they say that Herold did procure, counsel, command or abet Booth to kill and murder the President of the United States? If so, what word or deed of Herold's can they point to in this record that does amount to procuring, counseling, commanding or abetting? There is clearly none. The feeble aid that he could render to any enterprise was rendered in accompanying and aiding Booth in his flight, and nothing beyond. That of itself is a grave crime, and carries with it its appropriate punishment.

I beg leave to conclude this defense with a quotation from Benet on Military Law and Courts-martial:

"Where the punishments for particular offenses are not fixed by law, but left discretionary with the courts, the above mandate of the Constitution must be strictly kept in view, and the benign influence of a mandate from a still higher law ought not to be ignored, that justice should be tempered with mercy."

THE TRIAL OF GEORGE A. ATZERODT FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

Atzerodt's¹ part in the conspiracy was the assassination of Vice-President Johnson,² but he contended that though selected by Booth for this deed, he refused to perform it, and so informed him some time before the 14th of April. He was often in consultation with Booth in his room at the National Hotel,³ was a visitor at the Surratts,⁴ and was with

¹ "George A. Atzerodt was about thirty-three years of age. He was born in Germany, but lived in Charles County, Md., and was by occupation a coach painter at Port Tobacco during the war; also engaged as a blockade runner. He was a short, thick-set, round-shouldered, brawny-armed man, with a stupid expression, high cheek bones, a sallow complexion, small, grayish-blue eyes, tangled, light brown hair, and straggling, sandy whiskers and mustache. At the trial he apparently manifested a stoical indifference to what was going on in the court, although an occasional cat-like glance would reveal his anxiety concerning himself. Evidently crafty, cowardly and mercenary, his own safety was doubtless the all-absorbing subject of his thoughts. Atzerodt made a statement to several parties that Booth and Surratt wanted a man to secure a boat and hold himself in readiness to ferry a party over the Potomac and he consented to do the work. This was to have taken place near Port Tobacco, but the first plot, to capture the President, failed, and when the second, to kill, was proposed, he declined to have anything to do with it. His statement stands as worthless, for there is no doubt that he finally intended to carry out the instruction of Booth to kill Vice-President Johnson, but he lacked the nerve when the hour of execution came. He was considered by men who knew him to have but little courage and to be remarkable for his cowardice. He was a good-natured kind of a fellow and just such a one as the fascinating Booth could win over to do such deeds as were assigned to him." Oldroyd.

² See his statement, *post*, p. 166.

³ Marcus P. Norton, pp. 142, 318.

⁴ Louis J. Weichmann, pp. 220, 433; Anna E. Surratt, pp. 238, 433; Mrs. Eliza Holahan, p. 240; John T. Holahan, p. 243.

Herold arranging for horses at the livery stable the day of the tragedy.⁵

Atzerodt spent two weeks previous to the assassination at the Pennsylvania House in Washington and returning one night after a round of drinking with some young men, he said: "I am pretty near broke, though I have friends enough to give me as much money as will keep me all my life. I am going away one of these days, but I will return with as much gold as will keep me all my lifetime."⁶

On a leaf of the register of the Kirkwood House the name of G. A. Atzerodt was written on the morning of April 14, about eight o'clock and a room assigned him. He paid one day's board in advance but did not occupy the bed that night, although he deposited in the room his numerous effects, among which was a coat found hanging on the wall in which was a bank book of John Wilkes Booth showing a credit of \$455 with the Ontario Bank, Montreal, October 27, 1864, and also a map of Virginia and some handkerchiefs with various initials. Underneath the pillow was found a loaded revolver.⁷ This room was on the floor above the room then occupied by Vice-President Johnson, and in coming down from it to reach the office of the hotel, a person would pass Mr. Johnson's door. He made inquiries of another guest as to the location of the Vice-President's room, who pointed out Mr. Johnson as he sat in the public dining-room at dinner.⁸ He was seen at different times during the night of the 14th. About midnight he got on a street car and on the same car was Washington Briscoe, an acquaintance, who asked him if he had heard the news of the assassination. Atzerodt said he had and immediately implored his friend to allow him to sleep in his store. Briscoe's store was in the Navy Yard and he positively refused Atzerodt's pleadings for shelter. Atzerodt then said he would go back to the

⁵ John Fletcher, p. 139.

⁶ John Greenwalt, p. 139.

⁷ John Lee, p. 138.

⁸ Col. W. H. Nevins, p. 138.

Pennsylvania House.⁹ He had appeared on horseback at that hotel between ten and eleven o'clock and asked a colored man working at the hotel to hold his horse while he went in to the bar.¹⁰ After spending a few minutes there he came out, mounted his horse and rode off. He again appeared about two o'clock on the morning of the 15th, this time on foot, and applied for a room. When reminded by the proprietor that he had not registered, he said: "Do you want my name?" He hesitated, but stepped back and registered. He had never previously hesitated to register on the numerous times he had stopped there. He left the hotel between five and six in the morning¹¹ and about eight o'clock he entered a store in Georgetown and got the loan of ten dollars, giving his revolver for security, saying that he would bring the money back the following week.¹² He was next seen at the country residence of Hezekiah Metz, in Montgomery County, Md., twenty-two miles from Washington, where he arrived before noon on Sunday, the 16th. He dined with the family and remained several hours. Mr. Metz inquired about the news and in the conversation said that he understood that General Grant had been shot. Atzerodt replied that, "if the man that was to follow him had done so, it was likely to be so."¹³ From Metz's he went to the home of his cousin, which place he reached between three and four on Sunday afternoon. He remained there, occupying his time by walking about and working in the garden until Thursday, when he was arrested.¹⁴ When asked by the sergeant if he had anything to do with the assassination he said he had not, but he afterwards confessed to the provost marshal that on the night of the assassination he had thrown away his bowie knife on the street in Washington,¹⁵ and a

⁹ Washington Briscoe, p. 139.

¹⁰ James Walker, p. 140.

¹¹ John Greenwalt, p. 139.

¹² John Caldwell, p. 141.

¹³ Hezekiah Metz, p. 141.

¹⁴ Hartman Richter, p. 145.

¹⁵ James M. McPhail, p. 141.

colored woman subsequently picked it up at the place where he said he had thrown it.¹⁶

The evidence showed very clearly that Atzerodt was very close to Booth and had knowledge of all the phases of the conspiracy; but it is equally clear that when the time came to do his part, he weakened and abandoned his role. The reason was that when the hour of execution came he lacked the nerve to carry out his intentions. He was a born coward and his counsel at the trial tried hard to convince the court that it was impossible that Booth should have chosen such a man for such a task. "I intend to show," said Mr. Doster, "that he is a constitutional coward, that if he had been assigned to assassinate the Vice-President he never would have done it, and that from his known cowardice, Booth probably did not assign him to any such duty."¹⁷

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,¹⁸ President.¹⁹

May 13.

The prisoner, *George A. Atzerodt*, had been previously charged with (1) being a member of the general conspiracy, and (2) that he did "lie in wait for Andrew Johnson, Vice-President of the United States, with the intent unlawfully and maliciously to kill and murder him,"²⁰ and had pleaded *not guilty*.²¹

Judge Advocate General *Holt*²² and Assistant Judge Advocates *Bingham*²³ and *Burnett*,²⁴ for the Government.

William E. Doster,²⁵ for the Prisoner.

¹⁶ William Clendennin, p. 141.

¹⁷ See p. 145.

¹⁸ See p. 34.

¹⁹ For the other members of the court see *ante*, p. 33.

²⁰ See *ante*, p. 36.

²¹ See *ante*, p. 44.

²² See p. 35.

²³ See p. 35.

²⁴ See p. 35.

²⁵ See p. 42.

THE TESTIMONY FOR THE PROSECUTION.

Robert R. Jones. Am a clerk at the Kirkwood House in this city. The register shows that Atzerodt took room No. 126 on the morning of 14th April last before 8 a. m. I did not see him until between 12 and 1. Recognize Atzerodt among the accused. That is the man.

Went to the room occupied by Atzerodt after it had been opened by Mr. Lee, on the night of 15th April, and I saw all the articles that were found there. Can not identify the knife, though it was similar to the one just shown me. It was between the sheet and the mattress. The bed had not been occupied on night of 14th, nor had the chambermaid been able to get into the room the next day. Atzerodt paid one day in advance. Had never seen him in the hotel before.

John Lee. Belong to the military police force of this city. On the night of 15th April went, by order of Major O'Beirne, to the Kirkwood House. On the hotel register I found a name written very badly—G. A. Atzerodt. Went to the room occupied by this man; the door was locked, and the key could not be found. Burst open the door. Found a black coat hanging on the wall; underneath the pillow or bolster a revolver, loaded and capped. In the pocket of the coat found a bank book of J. Wilkes Booth, showing a credit of \$455, with the Ontario Bank, Montreal, and also a map of Virginia; a handkerchief marked Mary R. Booth; another marked F. M. or F. A. Nelson; another handkerchief with the letter H in the corner. In the bank book was an en-

velope with the frank of Hon. John Conners. There was also a pair of new gauntlets, a colored handkerchief, three boxes of cartridges, a piece of licorice and a tooth brush. There was also a brass spur, a pair of socks and two collars. Between the sheets and mattresses found a large bowie knife. The room was No. 126, on the floor above the room then occupied by Vice-President Johnson.

Cross-examined. In coming down from room 126, to reach the office of the hotel, a person would pass the door of the room occupied by Vice-President Johnson. When I came down there was a soldier at the door. A man coming down the stairs could easily throw a handful of snuff in the soldier's eyes and go right into Mr. Johnson's room.

Lyman S. Sprague. Am clerk at the Kirkwood House. Went up to the room of Atzerodt, with Mr. Lee, and was present when it was broken open. No one inquired for Atzerodt on the 14th while I was in the office.

Colonel W. R. Nevins. Was in this city on 12th April and stopped at the Kirkwood House. While there I saw that man (pointing to A. Atzerodt) in the passage that leads to the dining room; he asked me if I knew where President Johnson was. Showed him where Mr. Johnson's room was, on the left-hand side of the passage. However, said I, the Vice-President is now eating his dinner, and pointed him out to him. This was between 4 and 5 o'clock. He looked into the dining room; whether he went in, do not know.

John Fletcher. Am foreman at J. Naylor's livery stable, this city. On 3d of April, Atzerodt and another gentleman came to the stable with two horses. Atzerodt said they wanted to put up the horses at the stable, and I ordered them put up. The other gentleman said he was going to Philadelphia, and that he would leave the sale of his horse to Atzerodt; he had left, and have not seen him since. Atzerodt kept the horses at the stable until 12th April, when he sold one of them to Thompson, the stage contractor, and took the other, a brown horse, away. This was a heavy, common work horse, blind of one eye.

Saw Atzerodt on 14th April, when he and Herold came to the stable with a dark bay mare. He said he had sold the brown horse and saddle and bridle in Montgomery County, and had bought this mare, with saddle and bridle. Told me to put up the mare in the stable. At half-past 6 the colored boy had the mare at the door, with saddle and bridle on her. Atzerodt paid the boy fifty cents for her keep, and asked me if that was right; I said yes. If I stay until morning, he asked, how much more are you going to charge me? Only fifty cents, I said. He went out and stayed about three-quarters of an hour, when he told me not to take the bridle or saddle off the mare until 10 o'clock, and to keep the stable open for him. Said I would do so, and that I would be there myself at that time. At 10 he came after the mare. Asked me to take a drink with him, and I did, at the Union Hotel. I had beer and he drank whisky. Returning to the stable he said, If

this thing happens tonight you will hear of a present. He seemed about half-tight, and was very excited looking. As he mounted the mare I said, I would not like to ride that mare through the city in the night, for she looks so skittish.

Well, said he, She's good upon a retreat. Then said to him, Your acquaintance is staying out very late with your horse; that was Herold. Oh, said he, He'll be back after awhile. Atzerodt then left, and I followed him; he went to the Kirkwood House. Watched until he came out and mounted the mare again.

Washington Briscoe. Know Atzerodt. On the night of 14th about 12 he got on a Navy Yard car at Sixth street. Was in the car. Asked him if he had heard the news, and he said he had. He asked me to let him sleep in the store, down at the Navy Yard with me; told him he could not. His manner was excited, and he was very anxious to sleep there; he urged me to let him. Told him again he could not; that the gentleman I was with was there, and I had no right to ask him. He rode down as far as I did, then got out and asked me again. When he left me he said he would go back to the Pennsylvania House, where he was stopping.

John Greenwalt. Keep the Pennsylvania House. Know Atzerodt. A person frequently called on him who, I have since found, was J. Wilkes Booth.

Sometimes Booth would come through the hall where Atzerodt would be sitting; at other times Booth would walk in and walk back, when Atzerodt would get up and follow him.

On one occasion Atzerodt

asked me to take a drink, which I did, when he said, Greenwalt, I am pretty nearly broke, but I have always got friends enough who will give me as much money as will see me through. He added, I am going away some of these days and I will return with as much gold as will keep me all my lifetime. This was about 1st of April, nine or ten days after he first came to my house, which was on 18th March last. Atzerodt was in the habit of stopping at my house. Never stopped any length of time. He left my house on the Wednesday before the assassination. Had no baggage with him. Saw him next on the Saturday morning after the assassination between 2 and 3. A servant came up with a five-dollar bill and said, There is a man come in with Atzerodt who wants lodging, and wants to pay for it. Went down and gave the man his change. Had an uneasiness about the thing myself; thought there was something wrong.

Atzerodt asked for his old room; told him it was occupied. Told him he would have to go with this gentleman. So I gave this man Thomas his change, and told the servant to show him to his room, and Atzerodt was going to follow him, when I said, Atzerodt, you have not registered. Said he, Do you want my name? I replied, Certainly. He hesitated some, but stepped back and registered, and went to his room. He had never before hesitated to register his name.

Atzerodt left about 6 a. m. without paying his bill. Have never seen him since until now.

Cross-examined. Do not recognize the man Thomas among the prisoners. That man (point-

ing to accused, Spangler) resembles him somewhat, but is not so dark, and he has not got the beard on that Thomas had then. Could not be positive it is the same man. Never saw the prisoner, O'Laughlin, at my house.

James Walker (colored). At the Pennsylvania House I make fires, carry water and wait on gentlemen that come in late and early. Atzerodt came there between 12 and 1 o'clock Friday night, 14th April; held his horse while he went into the bar. Did not see any arms. About 2 o'clock in the morning he came back again, on foot this time. He left between 5 and 6 in the morning.

Lieutenant W. R. Keim. Was at the Pennsylvania House on the night of 14th April. Went to the hotel about 4 o'clock on the Saturday morning; Atzerodt was in bed when I went into the room. His bed was opposite mine. Asked him if he had heard of the assassination of the President, and he said he had; that it was an awful affair. When I awoke in the morning he was gone. Did not see any arms with him. About a week or ten days before the assassination I occupied room 51 with Atzerodt.

Would not swear that is the knife I have seen in Atzerodt's possession, but it was one about that size. Atzerodt went out of the room one morning and left the knife in his bed. Got up and took it, and put it under my pillow. In a few minutes he returned, went to his bed and looked about, and then said, Have you seen my knife? I replied, Yes; here it is. Then he said, I want that; if one fails, I want the other; and I gave it to him.

His pistol, a revolver, he always carried round his waist.

Cross-examined. Did not know the prisoner, Atzerodt, before meeting him at the Pennsylvania House. When I spoke to him about the assassination, he said it was an awful thing, and that was about all he said. Did not see him after that. It was about a week or ten days before the assassination that I took the knife from his bed. We had been drinking together, as we lay in bed; had had, perhaps, two or three whiskey cocktails apiece. His words, as near as I remember, when I gave him back the knife, were, If this fails, the other will not.

John Caldwell. Reside in Georgetown. On the morning after the assassination, about 8, was at Matthews' store, Georgetown, when George A. Atzerodt, whom I knew, came in; said he was going into the country, and asked me if I did not want to buy his watch. Told him I had a watch. He then asked me to lend him \$10. Told him I had not the money to spare. He then took his revolver off, and said, Lend me \$10 and take this as security, and I will bring the money or send it to you next week. Thought the revolver was good security for the money, and let him have the money, expecting him to pay it back. This is the revolver. It was loaded and capped as it is now. Did not inquire of him why it was loaded and capped.

Cross-examined. Have known Atzerodt three or four years. We were not on very intimate terms.

William Clendenin. Saw a colored woman pick up something out of a gutter on F street on

the morning after the assassination; asked what it was and she gave me this knife in a sheath.

James L. McPhail. Am Provost Marshal of Maryland. Received an intimation from Atzerodt that he desired to see me. Went to him, and he stated to me that, on the night of the assassination of the President, he had thrown his knife away in the streets of Washington. Made no promise or threat to him in any way in connection with the confession. Atzerodt said he had thrown his knife away just above the Herndon House, on the corner of Ninth and F streets.

Cross-examined. Atzerodt stated that his pistol was in the possession of a young man by the name of Caldwell at Matthews & Co.'s store, Georgetown. He had gone to Caldwell and borrowed \$10 on it, on the morning of 15th of April. He spoke of a coat hanging in the room at the Kirkwood House, and of a pistol, bowie knife and other articles there, all of which he stated belonged to the accused, David E. Herold.

Hezekiah Metz. Reside in Montgomery County, Md., twenty-two miles from Washington. On Sunday following death of Mr. Lincoln, prisoner, Atzerodt, was at my house and ate his dinner there. He was just from Washington. We were inquiring about the news, and a conversation came up about General Grant's being shot—for we had understood that he had been shot on the cars—when Atzerodt said, If the man that was to follow him had followed him, it was likely to be so. Atzerodt passed in the neighborhood by the name of Andrew Attwood.

Cross-examined. Two young men named Leaman were in the room when Atzerodt made the remark about somebody following General Grant. Do not remember that Atzerodt said anything about the assassination; they might have been talking about it before I came into the room.

Sergeant L. W. Gemmill. Arrested prisoner, Atzerodt, on 20th April, about 4 in the morning, at the house of a man named Richter, near Germantown. Knocked at the door; Richter came to the door; asked him if there was a man named Attwood there; he said no, there was no one there; that he had been there, but had gone to Frederick. Then told him that I was going to search the house, when he said that his cousin was upstairs in bed. His wife then spoke up, and said that as for that there were three men there. He got a light, and taking two men with me, went upstairs, where I found Atzerodt lying on the front of the bed. Asked him his name, and he gave me a name that I did not understand, and which I thought was a fictitious one. Told him to get up and dress himself, and took him to Mr. Leaman, a loyal man, who knew him. Mr. Leaman told me it was the man. Atzerodt made no inquiry as to why he was arrested; but denied having given me a fictitious name. Asked him if he had left Washington lately and he said no. Asked him if he had not something to

do with the assassination, and he told me that he had not.

Cross-examined. Do not remember the name Atzerodt gave me, and would not swear that it was not Atzerodt. He afterward insisted that that was the name he gave me. He spoke in German, and that is the reason why I did not understand the name.

Marcus P. Norton (recalled). Reside in the City of Troy, New York. From 10th January until 10th March I was stopping at the National Hotel in this city. Knew J. Wilkes Booth, having seen him several times at the theater. Saw the prisoners, George A. Atzerodt and Michael O'Laughlin, prior to the inauguration of President Lincoln. Saw Atzerodt twice and O'Laughlin three or four times, in conversation with Booth. Accidentally heard some conversation between Atzerodt and Booth, as I sat on the same seat with them, on the evening of the 2d or 3d March; but the substance of it was, that if the matter succeeded as well with Mr. Johnson as it did with old Buchanan, their party would get terribly sold.

Louis J. Weichmann, see pp. 220, 433.

J. M. Lloyd, see p. 91.

Anna E. Surratt, see pp. 238, 433.

Honora Fitzpatrick, see pp. 230; 239, 433.

Eliza Holahan, see p. 240.

John Holahan, see p. 243.

Eaton G. Horner, see pp. 325, 329.

THE DEFENSE.

Captain Frank Monroe. Had the bar on board the monitors the custody of the prisoner at Saugus and Montauk.

Mr. Doster. I wish to submit an application of the prisoner.

The Judge Advocate. This is a proposal on the part of the pris-

oner, Atzerodt, that his confessions made to the witness shall be heard by this Court as testimony in his favor—confessions in regard to which no evidence whatever has been introduced by the Government. I can not understand on what grounds such an application can be urged.

Mr. Doster. The prisoner desires to make a full statement of his guilt in this transaction, if there is any guilt, and of his innocence, if there is any evidence of it. He asks his statement to be placed on record, because he has been debarred from calling any other prisoners who might be his witnesses, for the reason that they are co-defendants. He therefore asks that he may be allowed to speak through Captain Monroe, as he would otherwise speak through one of his co-defendants. I ask this as a matter of fairness and liberality at the hands of the Commission.

The *Judge Advocate.* It is greatly to be deplored that the counsel for the accused will urge upon the Court proposals which they know to be contrary to law.

Mr. Doster. I have no more to ask the witness then.

Matthew J. Pope. Live at the Navy Yard and keep a livery stable. A few days before the assassination, about April 12, a gentleman called at my stable to sell a bay horse; it was a large bay horse and blind of one eye.

(*Atzerodt* was desired to stand up.)

That man has something of the same features; he was very much such a looking-man; but if it is the same he is not near so stout as when he brought the horse to my stable. Cannot say positively that it is the same. Told him that I did not want to buy the horse; I had more horses than I had use for. It was some time after 12 or 1 o'clock at noon. The horse was put into my stable and the gentleman went over to my restaurant and took a drink. He left there with a man named Barr, a wheelwright in the Navy Yard. They came back together, and the gentleman took his horse out and rode him away. The horse was in the stable, some two or three hours. Barr was not sober

at the time; had been drinking a little.

John H. Barr. Have seen Atzerodt once before. Was coming from my work at the Navy Yard one evening, and stopped at Mr. Pope's restaurant and there met this gentleman. We had several drinks together. I proposed to him to go home and take supper with me, and he did so. After supper we went back to Mr. Pope's restaurant, and had a couple of drinks. We then went out, returned to the restaurant again and took two more glasses, and from there went to Mr. Pope's stable. The gentleman took his horse out, and I saw him get on and ride off. By referring to my book, can tell the exact day on which this occurred. It was 12th of April.

James Kelleher. Am one proprietor of the livery stable on Eighth and E streets. On 14th of April, about half-past 2 in the day let prisoner, Atzerodt, have out of my stable a small bay mare sixteen and a half hands

high. He paid me five dollars for the hire. The horse was returned between 9 and half-past 9 that night. Atzerodt wrote his name on the slate in a tolerably good hand; and he gave me several references. Said he knew a good many persons there and that he was a coach-maker by trade. Stanley Higgins was one.

Samuel Smith. Am a stable boy at Mr. Kelleher's stable. Was at the stable on the night of 14th April last. The bay mare that was let out about 2 in the afternoon was returned about 11 o'clock. She was about in the same condition as when she was taken out.

Leonard J. Farwell. On the evening of 14th of April last, on leaving Ford's theater, went immediately to the Kirkwood House to the room of Vice-President Johnson, between 10 and half-past 10. Found the room door locked. I rapped, but receiving no answer, said in a loud voice, Governor Johnson, if you are in the room, I must see you. Believe the door was locked, but am not certain. Did not see any one apparently lying in wait near Mr. Johnson's door. Remained in Mr. Johnson's room about half an hour. Took charge of the door, and locked and bolted it on the inside. A number of persons came to the door, but I did not allow any of them to come in, unless he was some gentleman personally known to the Vice-President. Also rang the bell and had a guard placed at the door. Do not know that I have seen the prisoner before.

Miss Jane Herold. Am the sister of David E. Herold, the prisoner at the bar. Think I never saw that coat in the pos-

session of my brother. The handkerchief does not belong to him.

F. H. Dooley. Am an apothecary, on the corner of Seventh street and Louisiana avenue. The toothbrush and licorice found at the Kirkwood House have trademarks on them that I am positive do not belong to my establishment.

Somerset Leaman. I have known Atzerodt since he was a boy. I was at the house of Hezekiah Metz on the Sunday morning following the assassination of the President and met Atzerodt there. I said, in the way of a joke, Are you the man that killed Abe Lincoln? Yes, said he, and laughed. I said, Well, Andrew—he went by the name of Andrew there—I want to know the truth of it; is it so? Asked him if the President was assassinated, and he said, Yes, it is so, and he died yesterday evening about 3 o'clock. Then asked him if it was true that Mr. Seward's throat was cut and two of his sons stabbed, and he replied, Yes, Mr. Seward was stabbed, or rather cut at the throat, but not killed, and two of his sons were stabbed. Then asked him if what we heard about General Grant was correct, that he was assassinated on the same night. He answered, No, I don't know whether that is so or not; I don't suppose it is so; if it had been, I should have heard it. While we were at the dinner table my brother asked him the question again, whether General Grant was killed or not, and he said, No, I don't suppose he was; if he was killed, he would have been killed probably by a man that got on the same car—or the same train, I do not remember which—that Grant got

on. I thought Atzerodt seemed somewhat confused at the dinner table. He had been paying his addresses to the daughter of Mr. Metz, and it appeared that she had been showing him the cold shoulder that day, and he was down in the mouth in consequence.

James E. Leaman. Have known the prisoner, Atzerodt, for about two years. Was at the house of Mr. Metz the Sunday morning following the assassination. Broached the subject of General Grant being assassinated and asked him whether it was so or not. He said he did not suppose it was; and he added, If it is so, some one must have got on the same cars that he did. That was all the conversation that I had with him, with the exception that when he and I were out in the yard he said, O, my! what a trouble I see. I said to him, Why, what have you to trouble you? Said he, More than I will ever get shut of.

Hartman Richter. Am a cousin of the prisoner; he came to my house about 2 o'clock Sunday afternoon and remained till Thursday working in my garden and going among the neighbors. He seemed willing to go when he was arrested; he wore a kind of gray overcoat.

Samuel McMaster. In April I saw a pistol and dirk in prisoner's possession. About 10 p. m.

on April 14 he rode up to my door; he did not appear excited.

Mr. Doster. What do you know about his reputation for courage?

The *Judge Advocate.* I object; we are not trying his character for courage.

Mr. Doster. I intend to show that he is a constitutional coward; that if he had been assigned to assassinate the Vice-President he never would have done it and that from his known cowardice Booth probably did not assign him to any such duty.

The *Judge Advocate.* If the counsel wishes to prove that the prisoner, Atzerodt, is a coward, I withdraw my objection.

McMaster. I have heard men say that he would not resent an insult.

Alexander Brawner. Never considered prisoner a courageous man by a long streak. Have seen him in scrapes and have seen him get out of them very fast. His reputation is that of a notorious coward.

Louis B. Harkins. Prisoner is looked on by folks who know him as a good-natured sort of fellow. Never gave him credit down our way for much courage.

Washington Briscoe. Have known prisoner for seven years. He has always been thought a man of little courage and remarkable for his cowardice.

MR. DOSTER, FOR THE PRISONER.

Mr. Doster. May it please the Court: The prisoner, George A. Atzerodt, is charged with the following specification: "And in further prosecution of said conspiracy, and its traitorous and murderous designs, the said George A. At-

zerodt did, on the night of the 14th of April, A. D. 1865, and about the same hour of the night aforesaid, within the military department and military lines aforesaid, lie in wait for Andrew Johnson, then Vice-President of the United States aforesaid, with the intent, unlawfully and maliciously, to kill and murder him, the said Andrew Johnson." In support of this specification the prosecution has submitted the following testimony: The testimony of Weichmann and Miss Surratt, that he was frequently seen in company with Booth at the house of Mrs. Surratt. The testimony of Greenawalt, that Atzerodt had interviews with Booth at the Kimmell House, and that the prisoner once said, the 1st of April, "Greenawalt, I am pretty near broke, though I have friends enough to give me as much money as will keep me all my life. I am going away one of these days, but I will return with as much money as will keep me all my lifetime." The testimony of Marcus P. Norton, that he overheard him in conversation with Booth, in which it was said, about the evening of the 3rd of March, that, "If the matter succeeded as well with Johnson as it did with old Buchanan, the party would be terribly sold;" and, also, that "the character of the witnesses would be such that nothing could be proved by them." The testimony of Colonel Nevins, that he was asked by the prisoner, between four and five of the afternoon of the 12th of April, at the Kirkwood House, to point out Mr. Johnson while at dinner. The testimony of John Fletcher, that on or about April 3rd, the prisoner owned a horse and saddle, which he afterward said was sold in Montgomery county, and which was afterward found near Camp Barry Hospital, on the night of the 14th of April. The testimony of Fletcher, also, that on the evening of the 14th, the prisoner got a dark bay mare at Naylor's (which he had brought there in the morning), rode her away at half-past six, brought her back at eight, returned again at ten, ordered his mare, took a drink; said, "If this thing happens tonight, you will hear of a present;" and of the mare, "She is good on retreat;" that he then rode to the Kirkwood House, came out

again, went along D street, and turned up Tenth street. The testimony of Thomas L. Gardner, that the same dark bay one-eyed horse found near Camp Barry was sold by his uncle, George Gardner, to Wilkes Booth. Testimony of John L. Toffey, that the same horse was found at twelve and a-half A. M., Saturday, the 15th of April, near Camp Barry, about three-quarters of a mile east of the Capitol. The testimony of Washington Briscoe, that on the evening of the 14th, between twelve and half-past twelve, the prisoner got into the cars near the Navy Yard, and asked him three times to let him sleep in the store; that he was refused, and said he was going to the Kimmell House. The testimony of Greenawalt, again, that he came to the Kimmell House at two P. M., and in company with a man by the name of Thomas, and hesitated to register his name, and went away in the morning, about five, without paying his bill. Testimony of Lieutenant Keim, that he slept in the same room with Atzerodt that night at the Kimmell House, and when Keim spoke of the assassination, he said, "it was an awful affair," and that on the Sunday before he saw a knife in his possession—"a large bowie knife in a sheath"—and that Atzerodt remarked, "If one fails, I want the other." Testimony of Wm. Clendenin, that he found a knife similar to the one seen by Keim, in F street, between Eighth and Ninth streets, opposite the Patent Office, at six o'clock of the morning after the assassination. Testimony of Robert Jones and John Lee, that Atzerodt took a room at the Kirkwood House, No. 126, and that in it, on the morning of the 15th, were found a coat containing a loaded pistol and a bowie knife, and a handkerchief marked with the name of J. Wilkes Booth. Testimony of Provost Marshal McPhail, that Atzerodt confessed he threw his knife away near the Herndon House; that he pawned his pistol at Caldwell's store, at Georgetown, and borrowed ten dollars, and that the coat and arms at the Kirkwood House belonged to Herold. Testimony of Sergeant Gemmill, that he arrested Atzerodt near Germantown, and that he denied having left Washington recently, or having had anything to do with the

assassination. Testimony of Hezekiah Metz, that on the Sunday following the assassination Atzerodt said at his house, "If the man had followed Gen. Grant that was to have followed him, he would have been killed." To negative this specification the defense has submitted the following testimony: The testimony of Somerset Leaman, that the prisoner said at the house of Mr. Metz, when asked whether General Grant was killed, "No, I do not suppose he was. If he was killed, he would have been killed probably by a man that got on the same train of cars that he did," and that he never used the language imputed to him by Mr. Metz; that he was confused, but that the daughter of Mr. Metz, to whom he was paying his addresses, was showing him the cold shoulder on that day. The same confirmed by James E. Leaman. The testimony of James Keleher, proprietor of a livery stable, corner of Eighth and E streets, that Atzerodt hired a dark bay mare from his stable at half-past two o'clock on the afternoon of the 14th, wrote his name in a large hand, did not hesitate to put down his name, willingly gave references, told him he lived in Port Tobacco, and was a coachmaker by trade, and gave the names of John Cook and Stanley Higgins as references. Testimony of Samuel Smith, that the bay mare was returned about eleven o'clock on the evening of the 14th, very much in the same condition as when she went out: no foam on her. Samuel McAllister, that the prisoner rode up to the Kimmell House about ten o'clock on the evening of the 14th, and called to the black boy to hold his mare. Samuel McAllister further recognizes the knife found opposite the Herndon House, and the new revolver pawned at Caldwell's, as having been in the possession of Atzerodt, but does not recognize the coat found at the Kirkwood House, in Atzerodt's room, nor any of its contents. Provost Marshal McPhail's testimony, to show the coat and arms belonged to Herold. The testimony of Mrs. Naylor, to show that the handkerchief in the pocket of the coat in Atzerodt's room was marked with the name of Herold's sister. The testimony of Hartman Richter, that the prisoner came to his house in

Montgomery county, Maryland, made no effort to escape, worked in the garden, and went about among the neighbors. Testimony of Somerset Leaman, that he is of respectable family, and visited the most respectable families in Montgomery county. Of Samuel McAllister, again, that he was generally considered a coward. Of Washington Briscoe, that he was a noted coward. Of Lewis C. Hawkins, that he is a notorious coward. Of Henry Brawner, that he is a well-known coward. Testimony of Governor Farwell, that he came to the President's room, at the Kirkwood, immediately after the assassination; could have seen anybody lying in wait, but saw no one; remained there half an hour, but no one attempted to enter by violence. Testimony of William A. Browning, private secretary to Mr. Johnson, that the Vice-President was in his room from five for the balance of the evening. Testimony of Matthew J. Pope, that Atzerodt was, on the 12th, about noon, at his stable, trying to sell a horse, and remained there until he went off with John Barr. Testimony of John Barr, that he met Atzerodt on that day; knows it was on the 12th, because the same day, by his memorandum, he made two spring blocks. Testimony of Henry Brawner and Lewis C. Hawkins, to show that, on the 3rd of March he was at Port Tobacco. Testimony of Judge Olin and Henry Burden, that they do not believe Marcus P. Norton on oath.

Now, the prisoner submits that the testimony adduced by the prosecution fails utterly to support the specification, but corroborates his own statement in every particular. First, the specification charges him with "lying in wait" for Andrew Johnson, the Vice-President of the United States, "within the military department and military lines aforesaid." The evidence on this point of "lying in wait" is altogether circumstantial. Colonel Nevins says he inquired for President Johnson on the afternoon of the 12th between four and five. This decrepit gentleman, sixty years of age, acknowledges that he never saw the prisoner after that until the day he gave his testimony, about six weeks afterward,

although he saw him but for a minute at the time of the conversation, and describes him as looking exactly as he did then. Now, all the other witnesses say that Atzerodt is much thinner; all of them, even his most intimate friends, have had difficulty in recognizing him, and yet this peremptory old gentleman, with failing eyesight, says he looks just the same, although he saw him but for a moment, and then not again for six weeks. The testimony of this witness, besides the natural anxiety of a Government officer to serve his Government, and of an old one to retrench his waning importance, is incredible on the face of it; but if it were not, it is absolutely contradicted, beyond a doubt, by the witnesses for the defense. Matthew Pope, a livery stable keeper, near the Navy Yard, says a man came to his stable and tried to sell him a horse on the noon of the same day in April. He cannot recognize the prisoner, neither can he give the date, only he knows that he left his umbrella, and that he went off with John Barr, and was there between four and five. John Barr, being called, very well remembers that the person who left his umbrella, and who rode off from Pope's stable, was Atzerodt, who went home with him to supper; and he knows it was the day that he made two spring blocks for Sander-son & Miller, and he sees by reference to his book that it was the 12th of April.

The testimony of Colonel Nevins must, therefore, fall to the ground; and while it is conceded that some one out of the multitude at the Kirkwood may have asked the Colonel this common question, it is certain that this man was not Atzerodt, for at the given hour and day he was a mile from the house. The second point brought in support of this specification is the declaration of Marcus P. Norton, a lawyer from Troy, New York, to the effect that he saw Atzerodt in company with Booth, he thinks, on the evening of the 3rd of March, at the National, and heard it said that, "If the matter succeeded as well with Johnson as it did with old Buchanan, the party would be terribly sold;" also the words, "The character of the witnesses would be such that nothing

could be proved by them." Now, the prisoner says that this testimony is a deliberate falsehood. To prove that on the 2nd and 3rd days of March he was not in Washington, he brought Henry Brawner, proprietor of the Brawner House, at Port Tobacco, who says he knows that about that time he was at home; and Lewis P. Hawkins confirms the declaration. Neither of these two is absolutely certain of the date, for in country towns people can seldom prove their exact whereabouts on a given day three months back. This alone would be sufficient to throw doubt on the statements of Norton. But there is other evidence that he was deliberately making testimony. He says that on the same day he saw Dr. Mudd asking for Booth. Dr. Mudd has shown that on that day he was not at the National Hotel, nor in Washington city. This ingenious fabricator of testimony (in whose mind the bad character of himself as witness seems to dominate, and who, therefore, appears to put his own thoughts into the mouths of others), chose the 3rd day of March, the day before the inauguration, to give his story the probability which arises from connecting conversation with a given place. He appears, before he wove this fine perjury, to have omitted reading the testimony of Conover, who says the name of Andrew Johnson was not joined in the plot until after the inauguration, and that at that time the name of Mr. Hamlin was on the list; and so he perpetrated an egregious blunder. And he seems to have forgotten how strange it would seem, if, after having heard these things at the very time, eight years ago, when a plot was suspected to poison Mr. Buchanan, he should neither have suspected nor informed of such a plot, nor how curious an instance of memory that he should remember words exactly for three months, and faces, although he is shortsighted, and yet remembers no others. As we might conclude from internal evidence, the man is a notable false witness. It is in evidence that he takes patent cases, and, if he can not win by argument, he takes the witness box and swears them through. Mr. Henry Burden, an old, wealthy and honorable gentleman, swears he would not be-

lieve him under oath, and that his reputation for veracity is very bad. Justice Abraham B. Olin, of the Supreme Court of this District, formerly member of Congress from Troy, swears he has never had any difference with Norton, but his reputation for veracity is sufficiently bad, and he would not believe him under oath. It is true they have brought here three witnesses to bolster up this false character. One never knew him at all at Troy. The other knew him at Troy, but is a client who has the very case pending in which Norton's testimony was attempted to be impeached. It is not likely, then, that he would swear away the character of his own witness. The third, Horatio King, knew him only in business relations at Washington City.

The internal evidence of Norton's testimony, its falsity in the matter of Dr. Mudd, its proven falsity in the time of Atzerodt's visit to the National, and his known reputation as a false witness, leaves no shadow of doubt that his testimony is the offspring of a desire to distinguish himself on the witness stand, and that Atzerodt never met Booth at the National on the 3rd of March, nor had the alleged conversation with him. The third strong point of the prosecution is, that Atzerodt left room No. 126, at the Kirkwood House, taking the key along, and in his room was found a coat, containing a bowie knife, a pistol, loaded, and handkerchiefs marked with the name of J. Wilkes Booth, together with notes on the Ontario Bank, in the name of Booth, and memoranda showing they once belonged to Booth. The coat and all its contents were disposed of by the prosecution itself. McPhail swears Atzerodt told him the coat and arms all belonged to Herold. The clerk at the Kirkwood swears somebody called for Atzerodt in the afternoon. It was Herold who visited Atzerodt and left the coat in his room. One handkerchief is marked with the name of Mary E. Naylor, the sister of Herold. Another is marked "H," the initial of Herold. But why did Atzerodt suffer his coat and arms to be in his room? Because he was in a plot to capture the President. In so far he was the colleague of Herold and Booth. No farther. Because, for this purpose, to capture the President, and to be

used in defense, he carried the knife and pistol which McAllister used to keep for him—the same knife he threw away and the same pistol he pawned—and, therefore, he suffered Herold to leave his armor for the same reason he carried his own. But why did Atzerodt go away with the key and never come back? Because he did not want to be arrested. Because he was not guilty of aiding in the assassination of Mr. Lincoln. Because he was in the plot so far as to capture the President, and when he was ordered to kill the Vice-President and refused, he was unable to resolve either to inform the authorities, for fear of Booth, or to do the deed for fear of being hung; and so he just abandoned the room as he abandoned everything else connected with the conspiracy. Had he been able to resolve to carry out his allotted duty, he would naturally have taken the coat of Herold and put it on, and used the arms. Had he been able to resolve to fly at once, he would have removed all traces of his participation. One reason of leaving without paying was because it appears he had no money, and the reason for leaving the coat was because it did not belong to him, and he had no reason to conceal what could not implicate him. But the main reason, we must admit, was that he was between two fires, which brought out his native irresolution, and so he cut the Gordian knot by running away. We shall see that he left the Kimmell House, without paying his bill, the next morning. It was for the same reason—he had no money until after he had pawned his pistol at Georgetown.

The fourth point of the prosecution is that Atzerodt lodged in the same house with the Vice-President, and the relative situation of the rooms was favorable to assassination. Probably five hundred people roomed at the Kirkwood the same night, and had rooms which enabled the owners to command the room occupied by the Vice-President. The Vice-President's room is the first on the right-hand side, after reaching the landing of the second floor. It is a room which nobody can help passing, either going down or coming up. It is impossible to get a room lower than that in the house. That Atzerodt, therefore, might, in passing, have entered it, is

saying that everybody in the house might have done the same. But this room, No. 126, is about as remote from Mr. Johnson's as possible. It is in a different wing, and removed by many perplexing turns and four flights of stairs. It is very evident, at a moment's inspection, that any one desirous of lying in wait for the Vice-President could not well have missed his purpose farther, and that with that intent he would have sought, at least, a room on the same floor. But the actual fact is better than suppositions. Mr. Browning tells us that the Vice-President was in his room from five in the evening to ten at night, and that there were, therefore, six hours in which the deed could have been done. In all that time we have no evidence that Atzerodt was at the Kirkwood House, except the statement of Fletcher, the hostler at Naylor's stables, who says he followed Atzerodt, and saw him dismount at the Kirkwood, stay five minutes, and come out again. What was he doing there? He was taking a drink at the bar. It is impossible to show this. The barkeeper does not remember the faces of all who take a drink. If he was lying in wait, why did it take him but five minutes? But if he tried to kill Mr. Johnson, if he tried to get into his room, why is it not shown in evidence? If he was in any way prevented from getting into his room, why was it not shown in evidence? Governor Farwell, who went first to the Vice-President's room after the assassination, saw no one lying in wait; he was not told by the President there had been anybody lying in wait; the lock had not been tampered with; no attempt whatever was made; the Vice-President was in his room six hours, but at the very time when the President was shot he was left undisturbed, even by a knock, in his room. And why? Because Atzerodt refused to go and kill him. Because Atzerodt, during the evening, kept up appearances, but backed out. Because the instrument which was to have assassinated the Vice-President was either too conscientious or afraid to do it. During the whole half hour following no one attempted to kill him, no one was seen lying in wait. Why? Because there had been and there was no one lying in wait. He who was to do it was somewhere else, getting drunk. A fifth point

alleged in corroboration of his guilt is, that on his arrest by Sergeant Gemmill, he gave a false name, denied having left Washington recently, and said he had nothing to do with the assassination. In the last statement he but told the truth. Assassination and murder were things for which he was not by nature intended, and he had nothing to do with it. As for giving a false name, it appears the Sergeant understood his name to be Atwood, and had been ordered to arrest Atwood, and finally says he did not really understand the name, it was in German. Certainly he might say he had not left Washington recently. He knew that he had been in a plot to capture the President, and he knew that he had been a colleague of the President's murder in another scheme and, of course, he was afraid to confess his part then and there. Any presumption of guilt that might arise from these circumstances is negatived by Richter, his cousin, at whose house he was staying. He tells us that he worked in the garden; saw the neighbors; made no attempt to escape, nor was he in an unusual frame of mind. He was, doubtless, in that frame of mind when one, who had been on the verge of being dragged into murder for gold, had fled from the temptation and been saved—a happy and a tranquil mood. Finally, that he stated to Metz, "General Grant would have been killed if the man had followed that was to have followed him," is denied by the two brothers, Leaman, who state he said: "That Grant, if he was killed, must have been killed by somebody that got into the same car"—an innocent and most truthful proposition; and any remarks he made at that time about his "Having more trouble than he would ever get rid of," even supposing the words had not reference to the love matters which immediately preceded it, are by no means so much a sign of guilt as the honest expression of fear, lest one who has been a colleague in a lesser crime may get into difficulty about a greater, of which he was innocent.

The sixth point is, that Atzerodt said to Fletcher, on the evening of the 14th, after 10: "If this thing happens tonight you will hear of a present;" and also in reference to the mare: "She is good on a retreat;" and that the Sunday be-

fore he said to Lieutenant Keim, at the Kimmell House, after finding his knife: "If one fails, I shall want the other." On the first occasion both parties had been drinking, and Fletcher says he thought Atzerodt half drunk, while the other remark was made after each party had taken three cocktails. So that, even if we credit the drunken memories of the witnesses we cannot do more than ascribe it to pot valor, pointing to the possible desperate melee of an attempt to capture.

All the evidence to prove that the prisoner was lying in wait to assassinate Mr. Johnson may be summed up thus: On the same evening that the President was assassinated he had a room at the same hotel as the Vice-President, in which were found arms and the name of the President's murderer. He was before seen with the murderer, and used expressions indicating expectation of gold and the use of his arms, and afterward he fled the city, and said he had trouble on his mind. These circumstances are nothing by themselves. Any friend of Booth's might have carried arms, stayed at the Kirkwood, had Booth's coat in his room, said he expected to be rich, and afterward said he had troubles. These things might have naturally happened to John Ford, the manager of the theater; to Junius Brutus Booth; to any other friend of Booth's, innocent of the plot as the babe unborn. These circumstances are only important if it is proved that the person who is involved in them either tried to murder Mr. Johnson or was prevented. That proven, the arms are the tools of murder, the coat the coat of an accomplice, the talk of gold an expression of intention, the talk of trouble a confession of guilt. But if it is not shown that an attempt was made to murder, or that it was impossible to attempt murder; and if, on the contrary, it is shown that there was every opportunity for murder, and nothing in the world to prevent it, then these circumstances lose all their force, and we are bound to believe that where there was every opportunity and no attempt, there was no intention and no lying in wait.

Adopting the theory that Atzerodt intended to murder, and lying in wait to murder, we are met at every step with denials. Thus, if he was lying in wait, why did he not stay at

the Kirkwood House during the evening? Why did nobody see him lie in wait? Why did he come out of the Kirkwood at about ten minutes after ten without having tried to attack the Vice-President? Why did he not enter the room? Why, at 10:20, was he drinking at the Kimmell House? Why, in short, was he riding about town instead of waiting outside the Vice-President's room? There is only one theory that will make everything agree: Atzerodt backed out. He would have liked the money for capturing, but he did not like to be hung for murder. He never heard of murder before that evening at eight, or he would long before have hid himself. When he did hear it he had firmness enough to object. Coward conscience came to his rescue. But Booth threatened to kill, and he knew well enough he was the man to close the mouth of any one who troubled him. So he went off, driven like a poor frail being between irresolution and fear; took drinks, feigned to be doing his part, talked valiantly while the rum was in his throat, promised gloriously, galloped around fiercely, looked daggers, and when the hour struck did nothing and ran away. This, gentlemen, is the history in a small compass—*venit, videt, fugit*. He tried to become a hero, but he was only a coachmaker.

Look at the face of this impossible Brutus, and see whether you can see therein that he is—

“For dignity composed and high exploits.”

Why, gentlemen, this hero, who, under the influence of cocktail courage, would capture Presidents and change the destinies of empires, is the same fleet-footed Quaker, famous in Port Tobacco for jumping out of windows in barroom fights; an excellent leader—of a panic, this son of arms who buries his knife in a gutter and revolves his revolvers into a greenback. Well might it have been said to Booth:

“O, Cassius, you are yoked to a lamb
That carries anger as the flint bears fire;
Who much enforced shows a hasty spark,
And straight is cold again.”

He has the courage of vanity and of folly. As long as he could be seen on intimate terms with Booth about hotels, it did his soul good to be so great a confederate; and as long as he could see a bold stroke by which he might suddenly change the coachmaker into a prince, he was, doubtless, brave. But when he heard of murder, conceived to himself his going into the Vice-President's room and stabbing him to the heart, the pigeon-liver asserted itself, the prince was gone, and the habits of the tavern-brawler reappeared. Nor was he a natural boaster. He was simply the Curius of the conspiracy, who could neither keep his own secrets nor those of others; who was big with the portentous future, although he knew not what it was; who exchanged his wrath for a sudden prudence; and so as he imitated his prototype, "*Repente glorians maria montesque policeri coepit*," so he afterward imitated him by pointing out Booth, and informing, under the promise of mercy, upon his fellows. There is, then, no evidence whatever that he was "lying in wait to kill Mr. Johnson, with the intent, unlawfully and maliciously, to kill and murder him." There is only one other clause of the specification that deserves notice—the allegation that the lying in wait was "about the same hour of the night," viz.: Ten o'clock and fifteen minutes, on the evening of the 14th of April. Let us see, again, where the prisoner was at this time, 10:15. Fletcher says he came to Naylor's stable at ten. He then asked him whether he would have a drink. Fletcher said yes. They went down to Thirteen-and-a-half and E street, to the Union Hotel, and took a drink apiece; went back to the stable, and had some conversation about the mare. Meanwhile the boy had got the wrong horse, and had to go back and get the mare. Then they had some conversation about Herold. Then he rode down E, past Thirteen-and-a-half street, and finally came to the Kirkwood House. Fletcher says that he rode so slowly that he kept up with him. Now, believing what is improbable, that Fletcher did keep up with a man on horseback for three squares (for from Naylor's to the corner of Thirteen-and-a-half and E streets, is one square, to Twelfth and E two squares, and to Twelfth and Pennsyl-

vania avenue three squares), we are further obliged to believe that, in fifteen minutes, Atzerodt ordered a horse, walked two squares, waited for two drinks, paid for them, held two conversations, mounted, dismounted, had a horse changed, and, afterward, rode three squares so slowly that a hostler could follow him. It is not possible. At 10:15 Atzerodt was either not yet at the Kirkwood House, or else Mr. Fletcher made a mistake in his time. His course after this was as follows: Fletcher says he rode up D in the direction of Tenth; yet at this very time, about ten, McAllister says he came with his mare to the Kimmell House, "rode up to the door, and called the black boy out to hold his horse." Now, the Kimmell is on C street, near Four-and-a-half, and, of course, when he rode down D he went to the Kimmell.

Thus we now know what he was doing at the time Payne was at Mr. Seward's, and at the time Booth shot the President. He was riding round from bar-room to bar-room; and it is very plain he was now in liquor. He was half tight when Fletcher saw him, and yet took another drink with him. He went to the Kirkwood and took another drink; he went to the Kimmell and took another. Certainly, of getting drunk, of riding from tavern to tavern, of guzzling like a Falstaff, of having an inextinguishable thirst—of this he is guilty; but of lying in wait for the President at 10:15, we are paying him an undeserved compliment.

There is, therefore, no part of the specification proven, but the immediate contrary. During the whole of that evening, as far as the evidence throws any light on his conduct, instead of lying in wait near the Vice-President to murder him, he was standing over the different bars, from the Union House to the Kimmell, with the intent then and there, unlawfully and maliciously, to make Atzerodt drunk. Thus much of the specification.

There is one suggestion I will answer before I leave the specification. Why, if he was so cowardly, so halting, so irresolute a character, did Booth employ him? Booth employed him for an emergency which he was perfectly competent to meet. In the plot of the capture, the part assigned

to the prisoner was to furnish the boat to carry the party over the Potomac. For this his experience in a seaport town fitted him. This required no resolution and no courage. For participation in the President's assassination he could never have been intended. Booth, as these men all agree, as his own conduct shows, was ambitious to carry off the glory of this thing. Payne says Booth remarked, he "wanted no botching with the President and Gen. Grant." As for the rest, therefore, of the Cabinet, he probably had no concern; he was far more interested in his own part than in others. When he, therefore, told Atzerodt to take charge of the Vice-President, he must have known that the prisoner had not the courage, and therefore did not care particularly whether he accomplished it or not, only so he himself could attain the desired immortal infamy. He wanted Atzerodt as the Charon, the ferryman of the capture, and, after the failure, reserved him for greater things, the duties of Orcus, which he was incompetent to perform.

The charge is divisible into two separate and distinct allegations. First, "For maliciously, unlawfully, traitorously and in aid of the armed rebellion against the United States, combining, confederating and conspiring with Booth, Surratt, Davis, etc., to kill and murder Abraham Lincoln, General Grant, Andrew Johnson and William H. Seward, on or before the 6th day of March."

The substance of this allegation is, that as early as the 6th of March there was a project on foot to kill the President and the heads of State; and, to involve the prisoner, it must be shown that as early as March 6th he was advised of and agreed to it. Now, what evidence is there that there was a conspiracy to kill the President as early as March the 6th? Chester, the actor, says he knew of a plot to capture in the latter end of February. Weichmann, the chief witness for the prosecution, states that as late as the middle of March—about the 16th or 18th, he thinks—about three weeks before the assassination, John Surratt, Booth, Atzerodt and Payne, took a ride into the country, armed, and returned. What does this show, but that two weeks after the 6th of March it

was the intention of Booth to capture the President at the Soldiers' Home, and abduct him? Before and during the early part of March, Atzerodt was at Brawner's Hotel, at Port Tobacco, and could have known nothing of it, even had the plot existed. As late as the 18th of March, as was shown in the cases of O'Laughlin and Arnold, there was a project to capture, from which they backed out. As late as the 18th of March Booth admits the sale of horses, the detection of parties, and fixes the time of the abandonment of the scheme. Payne said he never knew of any plot to assassinate until the evening of the 14th, at 8 o'clock, at a meeting held at the Herndon House, while Atzerodt confirms it in all his confession, that the evening of the 14th day of April was the first time he ever heard of a plot to kill the heads of State. The only evidence against this is the testimony of Norton, who declares that on the 3d of March, Booth and Atzerodt spoke as follows: "If the matter succeeded as well with Johnson as it did with old Buchanan, the party would be terribly sold;" from which it might be inferred that on that date assassination was broached to Atzerodt. Fortunately we know that this Norton is an egregious falsifier, as it was shown that neither Atzerodt nor Dr. Mudd was in Washington that day, and he himself is proved not worthy of being believed on oath.

The prisoner, therefore, cannot be found guilty of the first member of the charge.

The second member of the charge is, in substance, as follows: "For, on the 14th of April, A. D. 1865, with John Wilkes Booth and John Surratt, maliciously, unlawfully and traitorously assaulting, with intent to kill and murder, William H. Seward, and lying in wait to kill and murder Vice-President Johnson and Gen. Grant."

This charges Atzerodt with being an accomplice of Payne in the assault on Mr. Seward, and an accomplice of whoever was lying in wait for Gen. Grant and Vice-President Johnson. Now, it was proved beyond a shadow of doubt, under the specification, that Atzerodt himself was not lying in wait for President Johnson, nor was anybody else shown to be lying

in wait for him. Atzerodt is, therefore, neither principal nor accessory to the lying in wait for Vice-President Johnson. But was he not an accomplice or accessory to Payne's assault of Mr. Seward, or to Booth's killing of the President? If so, he must have been accessory either before the fact or after the fact. An accessory before the fact is "one who, being at the time of the crime committed, doth yet procure, counsel or command another to commit a crime." Now, was Atzerodt the one who procured, counseled or commanded either Booth or Payne? Certainly not. The position Atzerodt held was one of subordinate; he was the procured, the counseled, the commanded, as far as we can judge of the different characters, as far as we know that Booth was the ringleader; as far as we know that in all the dealings Atzerodt was the slave, and Payne and Booth the masters.

Was Atzerodt, then, accessory after the fact? There is greater plausibility of this, but no evidence. "An accessory after the fact may be where a person, knowing a felony to have been committed, receives, relieves, comforts or assists the felon." Did Atzerodt in any way help Booth or Payne after the felony was committed? No; he never saw either of them after the meeting at 8 o'clock until he met Payne on the monitor. Instead of assisting them, he kept getting drunk; instead of helping them across the river, the sergeant says only two passed the bridge, viz.: Booth and Herold; instead of showing by his horse he had assisted, his horse came back just in the same condition as it went away, and that at eleven o'clock; instead of comforting or relieving them across the river, he went to Washington Briscoe, and finally to bed at the Kimmell House, instead of receiving; he first told McPhail and Wells Booth had gone in the direction of Bryantown, and confessed the whole affair, and had them all arrested. The assistance he has rendered the assault and murder is such neither of the principals has any occasion for gratitude; and, therefore, he cannot be found guilty of being an accessory after the fact, neither helping Booth nor Payne. But the prosecution have laid great stress on a big bay horse, with large feet, and blind in one eye.

They show that such a horse was found saddled (near Camp Barry), and without a rider, at twelve o'clock on the night of the assassination. They show that this horse was brought to Naylor's stable by Atzerodt and another man on the 3d of April, to be sold and kept there until the 12th of April; that on the 14th, Atzerodt came to the stable again and said he had sold the horse in Montgomery County; that Fletcher, the hostler, swears the horse, saddle and bridle Atzerodt said he sold, are the same found near Camp Barry. Well, what, if this testimony be true, is the conclusion? One conclusion is, that Atzerodt told a lie, for how, if he sold this horse in Montgomery County on the 12th, comes he to Camp Barry on the 14th? Well, let us concede that Atzerodt lied. We are not trying him for his veracity. He is not bound to tell every hostler how he disposes of his horses. But the second conclusion the prosecution draws is, that Payne rode this horse, and that Atzerodt furnished him the horse. Let us examine what ground there is for the conclusion. According to Fletcher, the horse when brought to Naylor's in April did not belong to Atzerodt. He belonged to the gentleman with him, who "left him in Atzerodt's care to sell." He was, therefore, factor of the gentleman in the horse business, and took the horse away on the 12th. The negro who saw the horse Payne rode, says he was a "big bay, very stout." But was this horse not belonging to some one else? Was the horse found at Camp Barry ever ridden by Payne? The truth of the whole matter is this: The horse brought to Naylor's was bought by Booth of Mr. Gardiner, living in Prince George's County, in the latter part of last November, according to the evidence of Thomas Gardiner. On April 3d, Atzerodt went to Naylor's with Booth, and was ordered to sell him there. The saddle and all belonged to Booth. It was the same big bay which Atzerodt, on the 12th, tried to sell to Matthew Pope, at the Navy Yard, for Booth. On the 12th, Atzerodt, not succeeding in selling him, returned him to Booth, and that is the last connection that Atzerodt ever had with the horse. He tried to sell, and could not, and so gave him back to Booth. Here ends the brokerage and the respon-

sibility of Atzerodt. Whether Booth ever gave this horse to Payne, and where he kept him until that evening, are questions that Payne alone can answer. It is probable that this horse was kept for two days in the stable in the rear of Ford's, and on that night given to Payne. But there is no evidence that Atzerodt gave Payne a horse over which he had ceased to have control, and which belonged to Booth. On the contrary, it is shown that Atzerodt was never seen in company with that horse after the 12th, and never claimed to be the owner. Any inference of complicity, therefore, drawn from this horse is turning horse-brokerage into murder. The prisoner, then, being neither guilty as accessory before nor after the fact, neither counseling nor aiding Payne and Booth before, nor assisting and receiving Payne and Booth after the fact, cannot be found guilty of any branch of the charge.

What is, then, the plain, unvarnished truth of Atzerodt's part in this conspiracy? I will briefly relate it. During the latter part of February, John Surratt and Booth wanted a man who understood boating, and could both get a boat and ferry a party over the Potomac on a capture. Surratt knew Atzerodt, and under the influence of great promises of a fortune, the prisoner consented to furnish the boat, and do the ferrying over. The plot was attempted the 18th of March, and failed. Booth, however, kept his subordinates uninformed of his plans, except it was understood that the President was to be captured. Meanwhile, everybody was waiting for Booth. On the 18th of March Atzerodt went to the Kimmell House. On the 1st of April he talked of future wealth. On the 6th he spoke to Lieut. Keim, over their liquor, of "using one, if the other failed." On the 12th he stayed at the Kirkwood, and tried to sell the bay horse at Pope's. On the 14th Booth unfolded his plans at the Herndon House, and Atzerodt refused. From the Herndon House he went to Oyster Bay and took drinks till ten. At ten he took a drink with Fletcher at the Union; at ten minutes after ten he took a drink at the Kirkwood; at twenty minutes after ten he took a drink at the Kimmell House, and rode about the city.

At eleven he returned his horse; at twelve he was at the Navy Yard; at two he went to bed. Next morning at five he got up and went to Georgetown, pawned his pistol, and went to Mr. Metz's. On the 16th (Sunday) he took dinner at Metz's. On Sunday evening he went to Hartman Richter's. On the 19th he was arrested. Thus ends this history, which, under a greater hand, might have become a tragedy, but with the prisoner has turned into a farce.

Before I close, it is my duty to submit some reflections as to the nature of the crime and the nature of the penalty, in case you should find him guilty, which I hold cannot be done under the evidence. This man is principal in an attempt to abduct the President of the United States. He has assaulted no one; he has sheltered no one that did assault. He has killed no one, nor has he sheltered any one that did kill. You can, therefore, only find him guilty of a crime for which he is not on trial. If it be argued that although the prisoner ran away, he intended to kill Mr. Johnson, the answer is, intention can only be inferred from acts. "It is a universal rule that a man shall be taken to intend that which he does." Hale, P. C. 229. And the converse of this is true, that a man shall not be taken to intend what he does not do. *Exteriora acta indicunt animos secreta*, 8 Co. 146. And therefore, as we know he ran away we are bound to infer that he had no intention of murder. If it be argued that although neither guilty, as accessory in felony nor principal in treason, he is yet guilty of the conspiring, which is the essence of the offense, the answer is, the conspiracy in which he was engaged is not the conspiracy for which he is on trial; and that as soon as he knew of the latter he hastened to dissolve all connection with the conspirators.

As for the punishment, supposing he could be found guilty of either the charge or the specification, the offense in either case would only be technical and have damaged no one; and even supposing he were proved guilty of the charge and specification, he has already turned state's evidence to the Provost Marshal, and therefore his punishment would fall under the practice usual in the courts of justice, that one

who confesses has an equitable right to the leniency of the court. His case, however, rests on no such slender ground. Instead of conspiring to kill, he refused to kill; and instead of lying in wait to murder, he intoxicated himself at the appointed hour, and next morning ran away. He is guilty solely of what he confesses—of conspiring to abduct the President—and of that can be found guilty only under a new indictment.

I claim, therefore, at your hands, an unqualified acquittal. That he did wrong in conspiring to capture is admitted. That he should be punished for it whenever tried for it, is also admitted. But that he is innocent of both charge and specification as now laid down is so transparent that his acquittal will, I trust, be urged by the Judge Advocate as a matter of form, if it were not also a matter of justice.

THE PRISONER'S STATEMENT.

Mr. Doster then read to the Court the following statement signed by the prisoner:

I am one of a party who agreed to capture the President of the United States, but I am not one of a party to kill the President of the United States, or any member of the Cabinet, or General Grant, or Vice-President Johnson. The first plot to capture failed; the second—to kill—I broke away from the moment I heard of it.

This is the way it came about: On the evening of the 14th of April I met Booth and Payne at the Herndon House in this city at 8 o'clock. He (Booth) said he himself should murder Mr. Lincoln and General Grant, Payne should take Mr. Seward and I should take Mr. Johnson. I told him I would not do it; that I had gone into the thing to capture, but I was not going to kill. He told me I was a fool; that I would be hung anyhow and that it was death for any man that backed out; and so we parted. I wandered about the streets until about 2 o'clock in the morning and then went to the Kimmell House and from there pawned my pistol at Georgetown and went to my cousin's house in Montgomery County, where I was arrested the 19th following. After I was arrested I told Provost Marshal Wells and Provost Marshal McPhail the whole story; also told it to Captain Monroe, and Col. Wells told me if I pointed out the way Booth had gone I would be reprieved, and so I told him I thought he had gone down Charles County in order to cross the Potomac. The arms which were found in my room at the Kirkwood House, and a black coat, do not belong to me; neither were they left to be used by me. On the afternoon of the 14th of April

Herold called to see me and left the coat there. It is his coat and all in it belongs to him, as you can see by the handkerchiefs marked with his initial and with the name of his sister, Mrs. Naylor.

Now, I will state how I passed the whole of the evening of the 14th of April. In the afternoon at about 2 o'clock I went to Keleher's stable on Eighth street, near D, and hired a dark bay mare and rode into the country for pleasure, and on my return put her up at Naylor's stable. The dark bay horse which I had kept at Naylor's before, on about the 3rd of April, belonged to Booth; also the saddle and bridle. I do not know what became of him. At about 6 in the evening I went to Naylor's again, and took out the mare, rode out for an hour and returned her to Naylor's. It was then nearly 8, and I told him to keep the mare ready at 10 o'clock, in order to return her to the man I hired her from. From there I went to the Herndon House.

Booth sent a messenger to the "Oyster Bay" and I went. Booth wanted me to murder Mr. Johnson. I refused. I then went to the "Oyster Bay," on the avenue above Twelfth street, and whiled away the time until nearly ten. At ten I got the mare, and having taken a drink with the hostler, galloped about town and went to the Kimmell House. From there I rode down to the depot and returned my horse, riding up Pennsylvania avenue to Keleher's. From Keleher's I went down to the Navy Yard to get a room with Wash Briscoe. He had none, and by the time I got back to the Kimmell House it was nearly two. The man Thomas was a stranger I met on the street. Next morning, as stated, I went to my cousin Rich-ter's, in Montgomery County.

THE TRIAL OF LEWIS PAYNE FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

Lewis Payne¹ (his real name was Lewis Thornton Powell), who had been boarding at the Herndon House in Washington for two weeks, left there on the afternoon of the 14th of April, paying his bill at 4 o'clock and requesting dinner before the regular time, which was served to him.² Little was known of his whereabouts from that time until 10 p. m., when he rang the bell at the residence of William H. Seward, Sec-

¹ "LEWIS THORNTON POWELL was the son of the Rev. George C. Powell, a Baptist minister, who lived at the time of the assassination at Live Oak Station, on the railroad between Jacksonville and Tallahassee, Fla. The family consisted of six daughters and three sons. Lewis and his two brothers enlisted in the Confederate army in 1861. His two brothers were killed in battle, and Lewis, in Pickett's charge at Gettysburg, was wounded and taken prisoner. Upon his recovery he was detailed as nurse in a hospital, where he remained until he was sent to another hospital at Baltimore, in October, 1863. From there he deserted, returning to the Confederate army, remaining at Fauquier, Va., until January 1, 1865, when he again deserted and returned to Baltimore, taking rooms with Miss Margaret Branson, a lady whom he met in the hospital at Gettysburg. After he deserted he assumed the name of Payne. It was at Miss Branson's that he first met Booth, and readily fell in with the work of the conspiracy. During the trial Payne was the observed of all observers, as he sat motionless and imperturbed, defiantly returning each gaze at his remarkable face and person. He was very tall, with an athletic, gladiatorial frame, the light knit shirt which was his only upper garment disclosing the massive robustness of animal manhood in its most stalwart type. Neither intellect nor intelligence was discernible in his unflinching dark gray eyes, low forehead, massive jaws, compressed full lips, small nose with large nostrils, and stolid, remorseless expression. His dark hair hung over his forehead, his face was beardless, and his hands were not those of a man who had been accustomed to labor." Oldroyd, *ante*, p. 34.

"Payne was a native of the South, had served in the Confederate army, and toward the close of the war had drifted

retary of State.^{2a} When the door was opened by the colored doorkeeper, Payne stepped in holding a little package in his hand, saying that he had some medicine for Secretary Seward sent by Dr. Verdi, which he was directed to deliver in person and give instructions how it was to be taken. The doorkeeper informed him that he could not see Mr. Seward, but he repeated the words, saying he must see him. He talked very roughly for several minutes, against the protest of the doorkeeper, who said he had positive orders to admit no one to the sick chamber. The doorkeeper finally thinking he was really sent by Dr. Verdi, let him ascend the stairs;³ at the top he met Mr. Frederick Seward,⁴ a son of the Secretary, and assistant Secretary of State, to whom he told the object of his visit, but Mr. Seward told him he could not see his father; that he was asleep, but to give him the medicine and he would take it to him. That would not do, he must see the Secretary, and then Mr. Seward said: "I am the proprietor here and his son; if you cannot leave your message with me you cannot leave it at all." Payne started downstairs and after taking a few steps suddenly turned around and struck

into the North. Meeting an emissary of Booth in the City of Baltimore, he was quickly brought under the baleful influence of that designing character. Payne, who was a stranger in Washington, had met Booth and other conspirators in the room of John Surratt during one of his periodical visits, and thus became acquainted with the location of the house. The part of the murderous work assigned to Payne was the assassination of Hon. William H. Seward. How faithfully he endeavored to perform his share of the horrible crime is well known. Nothing but the kindly interposition of Providence restored to the country the life of that great man, as Payne left him on his bed covered with wounds and weltering in his gore." The Trial of Mrs. Surratt (John W. Clappitt), 131 N. Am. Rev. 223 (1880).

² Martha Murray, p. 172.

^{2a} See 3 Am. St. Tr. X.

³ W. H. Bell, p. 173.

⁴ SEWARD, FREDERICK WILLIAM. Born 1830, Auburn, N. Y.; son of William H. Seward. Editor Albany Evening Journal. Assistant Secretary of State, 1861-1869, 1877-1881. Member New York Legislature, 1875. Member International Arbitration Congress, 1904. Author of Life and Letters of W. H. Seward; Reminiscences of a War Time Statesman and Diplomat. New York, 1916.

Mr. Seward, felling him to the floor. Sergeant Robinson, acting as attendant nurse to Mr. Seward, was in an adjoining room and on hearing the noise in the hall opened the door, where he found Payne close to it. As soon as the door was opened he struck Robinson in the forehead with a knife, knocking him partially down and pressing past him to the bed of Mr. Seward, leaned over it and struck him three times in the neck with his dagger.⁵

Mr. Seward shortly before had been thrown from his carriage with great violence, breaking an arm and fracturing his jaw. The nurse attempted to haul Payne off the bed when he turned and attacked him the second time. During this scuffle, Major Augustus H. Seward,^a another son of Secretary Seward, entered the room and clinched Payne, and between the two they succeeded in getting him to the door, where he broke away and ran downstairs and outdoors, dropping his hat and pistol in his flight. During the struggle Payne several times repeated, "I'm mad; I'm mad!"⁶ The colored doorkeeper ran after the police when Frederick Seward was knocked down and returning, reported that he saw the man riding a horse and followed him some distance, when he was lost sight of. In some way Payne's horse got away from him, for a little after 1 o'clock on the morning of the 15th Lieutenant Toffey found a dark bay horse with saddle and bridle on and the sweat pouring from him, standing in the street, some distance from Mr. Seward's mansion.⁷

Payne tried to reach Baltimore and walked all night in that direction, but the morning found him in the country hungry and exhausted, and from his retreat in the woods he saw the cavalry scouring the roads, and if he ventured on them he read the handbills describing the murderers and offering large rewards for their apprehension. Near a farm house he found a pick and shovel, and disguised as a laborer

⁵ Sergeant George F. Robinson, p. 174.

^a (1826-1876.) Born Auburn, N. Y. Paymaster during Civil War and Brevet Colonel. Died Montrose, N. Y.

⁶ Major Augustus H. Seward, p. 175.

⁷ Lieut. John F. Toffey, p. 180.

he retraced his steps to Washington, hoping to find shelter and safety at the Surratt house. But when he arrived there, he found the officers of the law in possession and was at once arrested and taken to prison.⁸

⁸ "In the confession made by Payne to his counsel, in which he stated in full his connection with the conspiracy, he related that after the attempted assassination of the Secretary of State, and supposing that he had accomplished his fiendish work, he endeavored to make his escape to Baltimore, and proceeded in the darkness of the night in that direction. The gray of the morning soon warned him, however, that it was not safe for him to proceed longer, and, to escape observation, he climbed a large tree. A farmhouse was situated not far off, he knew, as the farmer's dogs were baying in the distance. The tree, thick with early spring foliage, was near the roadside, and just after daybreak he heard the rush of cavalry, and, peering forth, saw them distinctly as they passed by on their search for the murderers. This rush of cavalry continued all day long, and motives of safety compelled him to remain in the tree. The gnawings of hunger were intense, and a burning thirst seized him. As night again fell upon farm land and city, his hunger and thirst becoming unbearable, he descended and approached the farmhouse. He did not alarm its inmates, as to do so would be to surrender himself to justice, as by this time the whole country was aroused, and placards descriptive of the murderers and offering large sums for their apprehension were posted in every direction.

"Unable to appease the cravings of hunger, knowing no one, a stranger in a strange land, with the blood of murder upon his hands, with every man's arm uplifted against him, and a price set upon his head—in a starving condition, he sought the only means he knew of in the world to relieve himself, and that was to go in search of his friend, John Surratt. Close by the farmer's house lay a pick and shovel, and an old cast-off hat. These he seized to aid in disguising himself, and, placing the hat on his head and the pick and shovel on his shoulder, he retraced his steps to that city in which, on the night previous, he had bathed in blood the silver locks of an old and honored man. Tortured by the phantasies of his crime, and startled by every swinging bough and rustling leaf, with the shadows shaping themselves into forms of avengers, his return to the city was slow and weary. It was just after midnight that he reached Mrs. Surratt's house and knocked at the door. It was answered by the officers who had taken possession of the house and arrested its inmates. The question was asked Payne what he wanted at that hour. He replied, seeing the state of affairs, that he had been employed by Mrs. Surratt the day before to dig a drain, and had come to see at what hour in the morning he should begin.

On the trial counsel for Payne admitted that he was the person who attempted to assassinate Secretary Seward; admitted that he was not insane within the legal definition of insanity, but urged that as he believed that what he did was right and justifiable, this should be taken into account in fixing his punishment.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,⁹ *President*.¹⁰

May 13.

The prisoner, *Lewis Payne*, had been previously charged with being a member of the general conspiracy and with attempting to murder William H. Seward, Frederick W. Seward, Augustus H. Seward, Emrick W. Hansell and George F. Robinson.¹¹ He pleaded *not guilty*.¹²

Judge Advocate General *Holt*¹³ and Assistant Judge Advocates *Bingham*¹⁴ and *Burnett*,¹⁵ for the Government.

William E. Doster,¹⁶ for the *Prisoner*.

THE TESTIMONY FOR THE PROSECUTION.

Mrs. Martha Murray. My husband keeps the Herndon House, corner of Ninth and F streets. The only one of the prisoners I recognize as having seen before is Lewis Payne. He was two weeks in our house, left the day of the assassination about 4 o'clock. We have dinner at half-past 4; he came into the sitting-

He was asked where he lived, and replied that he was a poor workman and had no home. That answer seemed sufficient to cause his arrest, which was accomplished, and he was taken to the office of the Provost Marshal, where he proved to be the assailant of the Secretary of State." The Trial of Mrs. Surratt (John W. Clappitt), 131 North Am. Review, 223 (1880).

⁹ See *ante*, p. 34.

¹⁰ For the other members of the Court, see *ante*, p. 33.

¹¹ See *ante*, p. 36.

¹² See *ante*, p. 44.

¹³ See *ante*, p. 35.

¹⁴ See *ante*, p. 35.

¹⁵ See *ante*, p. 35.

¹⁶ See *ante*, p. 42.

room, said he was going away, and wanted to settle his bill, and have dinner before the regular dinner; gave orders for the dinner to be cut off and sent up to him. He went into the dining-room, and I have not seen him since.

Do not recognize any of the prisoners as having visited this man.

Wm. H. Bell (colored). Live at the house of Mr. Seward, Secretary of State, and attend to the door. That man (Payne) came to the house on the night of 14th April. The bell rang; went to the door, and that man came in. He had a little package in his hand; said it was medicine for Mr. Seward from Dr. Verdi, and that he was sent by Dr. Verdi to direct Mr. Seward how to take it; said he must go up; told him that he could not go up; said he must go up; he must see him. Talked very rough to me in the first place; told him he could not see Mr. Seward; that it was against my orders to let any one go up, and if he would give me the medicine and tell me the directions, I would take it up, and tell Mr. Seward how to take it. He was walking slowly all the time, listening to what I had to say. He had his right hand in his coat-pocket, and the medicine in his left. He then walked up the hall toward the steps. I had spoken pretty rough to him, and when I found out that he would go up, I asked him to excuse me. He said, O, I know; that's all right; thought he might, perhaps, be sent by Dr. Verdi, and he might go up and tell Mr. Seward that I would not let him go up, or something of that kind; got on the steps and went up in front of

him. As he went up, asked him not to walk so heavy. He met Mr. Frederick Seward on the steps; told Mr. Frederick that he wanted to see Mr. Seward. Mr. Frederick went into the room and came out, and told him that he could not see him; that his father was asleep, and to give him the medicine, and he would take it to him. That would not do; he must see Mr. Seward. Mr. Frederick said, You cannot see him. He kept on talking to Mr. Frederick, saying, that he must see him, and then Mr. Frederick said, I am the proprietor here, and his son; if you cannot leave your message with me, you cannot leave it at all. He had a little more talk there for a while, and stood there with the little package in his hand. Mr. Frederick would not let him see Mr. Seward no way at all, and then he started toward the step and said, Well, if I cannot see him— and then he mumbled some words I did not understand, and started to come down. I started in front of him; got down about three steps, when I turned around to him and said, Don't walk so heavy; by the time I turned around to make another step he had jumped back and struck Mr. Frederick, who was falling; he threw up his hands and fell back in his sister's room two doors this side of Mr. Seward's room. I ran down stairs and out to the front door, hallooing murder, and then ran down to General Angur's headquarters; did not see the guard, and ran back again. By that time there were three soldiers who had run out of the building and were following me. When I got way back to the house, turning the corner

there, saw this man run out and get on his horse. He had on a light overcoat, but he had no hat on; did not see his horse when he came to the house, and did not know he had a horse until I saw him get on it; hallooed to the soldiers, there he is, going on a horse! They slacked their running, and ran out into the street, and did not run any more until he got on his horse and started off. I followed him up as far as I Street and Fifteen-and-a-half Street; he turned right into Vermont avenue, where I lost sight of him. He rode a bay mare; it was a very stout animal, and did not appear to be a very high horse. He did not go very fast until he got to I Street; must have been within twenty feet of him, but at I Street he got away from me altogether.

Do not know what he struck Mr. Frederick Seward with. It appeared to be round, to be mounted all over with silver, and about ten inches long; had taken it for a knife, but they all said afterward it was a pistol; saw him raise his hand twice to strike Mr. Frederick, who then fell; did not wait any longer, but turned round and went down stairs. When he jumped round, he just said, You, and commenced hitting him on the head; had hardly missed him from behind me until I heard him say that word.

Never saw this man about the door that I know of, nor did I see any person on the pavement when I came out.

Cross-examined. Do not know how old I am; guess between nineteen and twenty; was at school four or five years; have been at Mr. Seward's nine months

and am second waiter. The talk with the man was inside; he came in and I closed the door. He had a very fine voice.

Noticed his hair and his pantaloons, and noticed his boots that night. He talked to Mr. Frederick at least five minutes while up there near his father's door, in the third story. He had on very heavy boots at the time, black pants, light overcoat, and a brown hat. His face was very red at the time he came in; and he had very black, coarse hair.

Saw the same boots on him the night they captured him, and the same black pants.

The first time I saw the prisoner after that was on 17th of April at General Augur's headquarters. Colonel H. H. Wells asked me to describe this man; told him he had black hair, a thin lip, very fine voice, very tall, and broad across the shoulders, so I took him to be. There were twenty or thirty gentlemen in the room at the time, and he asked me if any gentleman there had hair like him, and I told him there was not. He then said, I will bring a man in here and show him to you; was leaning down behind the desk so that I could not be seen. The light was then put up, and a good many men walked into the room together. I walked right up to this man, and put my finger right here (on the lip) and told him I knew him; that he was the man. Nobody had offered me any money for giving the information, and no threats had been made to me.

Sergeant George F. Robinson. On 14th of April was at the residence of Mr. Seward, Secretary of State, acting as attendant nurse; he was confined to his bed

by injuries received from having been thrown from his carriage. One of his arms was broken and his jaw fractured.

That man (pointing to Lewis Payne) looks like the man that came to Mr. Seward's house on that Friday night; heard a disturbance in the hall, and opened the door to see what the trouble was; this man stood close up to it and struck me with a knife in the forehead, knocked me partially down, and pressed by me to the bed of Mr. Seward, struck him, wounding him. As soon as I could get on my feet, I endeavored to haul him off the bed, and then he turned upon me. In the scuffle Major Seward came into the room and clinched him. Between the two of us we got him by the door, and he, unclenching his hands from around my neck, struck me again, this time with his fist, knocking me down, and then broke away from Major Seward and ran down stairs.

Saw him strike Mr. Seward with the same knife with which he cut my forehead. It was a large knife, and he held it with the blade down below his hand; saw him cut Mr. Seward twice; the first time on the right cheek, and then cutting around his neck; did not hear the man say anything during this time.

Afterward examined the wounds, and found one cutting his face from the right cheek down to the neck, and a cut on his neck, which might have been made by the same blow, as Mr. Seward was partially sitting in bed at the time; and another on the left side of the neck. There may have been more, as it was all bloody when I saw it. Mr. Sew-

ard received all his stabs in bed; but after the man was gone, and I went back to the bed, I found that he had rolled out, and was lying on the floor.

Did not see Mr. Frederick Seward down on the floor; first I saw of him was after the man was gone; when I came back into the room he was inside the door, standing up. The man went down stairs immediately after he unwound his arm from round my neck, and struck me with his fist; did not see him encounter Major Seward.

After he was gone we picked up a revolver, or parts of one, and his hat.

(A slouch felt hat was exhibited to the witness.)

Should judge that to be the hat; it looks like the one found there.

That is the revolver picked up.

(At the request of the Court, the guard was directed to place the hat on the head of the prisoner, Payne, to see if it fitted him or not, which was done. It was found to fit him.)

(The accused, clad in the coat and vest in which he was arrested, and the hat found at Mr. Seward's, was directed to stand up for recognition.)

He looks more natural now than he did before; am not sure about it, but think that is the man that came to Secretary Seward's house on the night of the 14th of April. The pistol that was picked up in the room after he left was loaded.

Major Augustus H. Seward.
Am son of the Hon. William H. Seward, Secretary of State, and was at his home on the night of 14th of April last; saw that large

man, with no coat on (Lewis Payne) at my father's house that night.

Retired to bed at half-past 7 on the 14th, as I was to be called about 11 o'clock to sit up with my father; very shortly fell asleep, until awakened by the screams of my sister, when I jumped out of bed and ran into my father's room in my shirt and drawers. The gas in the room was turned down rather low, and I saw what appeared to me to be two men, one trying to hold the other at the foot of my father's bed; seized by the clothes on his breast the person who was held, supposing it was my father, delirious; but, immediately on taking hold of him, I knew from his size and strength it was not my father. The thought then struck me that the nurse had become delirious sitting up there, and was striking about the room at random. Knowing the delicate state of my father, I shoved the person of whom I had hold to the door, with the intention of getting him out of the room. While I was pushing him, he struck me five or six times on the forehead and top of the head, and once on the left hand, with what I supposed to be a bottle or decanter that he had seized from the table. During this time he repeated, in an intense but not strong voice, the words, I'm mad, I'm mad! On reaching the hall he gave a sudden turn, and sprang away from me, and disappeared down stairs. As I was pushing him out, and he came opposite the light of the hall, I saw that he was a very large man, dark, straight hair, smooth face, no beard, and had a view of the expression of his coun-

tenance; then went into my room and got my pistol. It may possibly have taken me a minute, as it was in the bottom of my carpet bag, to find it; ran down to the front door, intending to shoot the person, if he attempted to return; the servant boy came back and said the man had ridden off on a horse, and that he had attacked the persons in the house with a knife; then realized for the first time that the man was an assassin, who had entered the house for the purpose of murdering my father.

Suppose it was five minutes before I went back to my father's room. Quite a large crowd came around the door; I sent for the doctors, and got somebody to keep the crowd off before I went up to his room; was injured pretty badly myself, I found, when I got up stairs again. After my father's wounds were dressed, and after my own head had been bandaged, I went in and saw my father; found that he had one very large gash on his right cheek near the neck, besides a cut on his throat on the right-hand side, and one under the left ear; did not examine my brother's wounds; did not know how badly hurt he was; next day he was insensible, and so remained; found that he had two wounds, one on the scalp, that was open to the brain, and another one over the ear. After the pieces of fractured skull were taken out, it left the covering of the brain open. It was such a wound that I should have supposed could have been made with a knife, but the surgeons seemed to think it was made by the hammer of a pistol; heard that a pistol was picked up in the house, but I did not see it;

saw the hat that was found, and think I should recognize it.

(A slouch felt hat was exhibited to the witness.)

Am quite certain that is the hat.

The surgeons think it was a knife with which I was struck, and after the servant boy told me what the man had been doing, supposed so myself, though at the time thought I was being struck with a bottle or a decanter.

Feel entirely satisfied that the prisoner at the bar, Payne, is the same man that made the attack on that night.

Cross-examined. This is not the first time I have seen prisoner since the attack; I saw him on board the monitor the day after he was taken. I took hold of him the same way I had hold of him when I shoved him out of the room, and I looked at his face, and he had the same appearance, in every way, that he had the few moments that I saw him by the light in the hall; his size, his proportions, smooth face, no beard, and when he was made to repeat the words, I'm mad! I'm mad! I recognized the same voice, varying only in the intensity.

Surgeon-General Joseph K. Barnes. Was called on the night 14th of April, a few minutes before 11, to go to Mr. Seward. On arriving, found the Secretary wounded in three places; Mr. Frederick W. Seward insensible and very badly wounded in the head; the rest of the family I did not see. The Secretary was wounded by a gash in the right cheek, passing around to the angle of the jaw; by a stab in

the right neck, and by a stab in the left side of the neck.

Mr. Frederick Seward was suffering from a fracture of the cranium in two places; he was bleeding very profusely, exceedingly faint, almost pulseless, and unable to articulate. The wounds seem to have been inflicted by some blunt instrument—the butt of a pistol, a loaded bludgeon, or something of that kind.

Mr. Seward, the Secretary, had been progressing very favorably. He had recovered from the shock of the accident of ten days previously, and was getting along very well. His right arm was broken close to the shoulder-joint, and his jaw was broken in two places; but the serious injury of the first accident was the concussion.

The wounds of Mr. Seward were of a very dangerous character, and he is still suffering from them.

Saw Major Seward in the room; but I did not treat any of the wounded persons professionally, except Mr. Seward.

Doctor T. S. Verdi. Am a physician. On Friday night, 14th of April, about half-past 10, was summoned to the house of Mr. Seward, the Secretary of State; saw the Hon. William H. Seward, Mr. Frederick Seward, Major Augustus H. Seward, Mr. Robinson and Mr. Hansell, all wounded, and their wounds bleeding; had left Mr. Seward about 9 o'clock that evening, very comfortable, in his room, and when I saw him next he was in his bed, covered with blood, with blood all around him, blood under the bed, and blood on the handles of the doors.

Found Mr. Emrick W. Hansell

on the same floor with Mr. Seward, lying on a bed. He said he was wounded; undressed him, and found a stab over the sixth rib, from the spine obliquely toward the right side; put my fingers into the wound to see whether it had penetrated the lungs. I found that it had not, but I could put my fingers probably two and a half inches or three inches deep. Apparently there was no internal bleeding. It was very fresh; probably it was not fifteen or twenty minutes since the stab had occurred.

Cross-examined. Mr. Frederick Seward was conscious; but had great difficulty in articulating. He wanted to say something, but he could not express himself. He knew me perfectly well. He had a smile of recognition on his lips, and as I looked upon his wound on the forehead, he was evidently impressed with the idea that the severest wound was in the back of his head, and he commenced saying, It is, it is, and would put his finger to the back of his head; examined the wound, and found that his skull was broken, and I said to him, You want to know whether your skull is broken or not? and he said, Yes. He was sensible for some time, but in half an hour he went into a sleep, from which he woke in about fifteen or twenty minutes, and we attempted to put him to bed. Then he helped himself considerably; he went to sleep, in which he remained for sixty hours; he then improved in appearance, and gradually became more sensible.

Saw terror in the expression of all Mr. Secretary Seward's family, evidently expecting that his wounds were mortal; exam-

ined the wounds, and immediately turned round to the family and said, I congratulate you all that the wounds are not mortal; upon which Mr. Seward stretched out his hands and received his family, and there was a mutual congratulation. This was twenty minutes before Doctor Barnes arrived.

Mr. Seward had improved very much from his accident, and was not in a critical condition when this attack was made. The effect of the wounds he received on the night of the 14th was principally from loss of blood, which weakened him very much, and made his condition still more delicate and difficult to rally from the shock. The wound itself created more inflammation in the cheek that had been swollen by the injury received before, and rendered the union of the bones more difficult.

Robert Nelson (colored.) I live in Washington.

(A knife shown witness.)

That looks like the knife I found opposite Secretary Seward's house, on the Saturday morning after he was stabbed. I gave it to an officer at the door first, and afterward to that gentleman (Surgeon John Wilson, U. S. A.)

Dr. John Wilson.

(The knife shown to Robert Nelson exhibited to witness.)

This is the knife I received from the colored boy who has just left the stand. He gave it to me in the library of Mr. Seward's house, about 10 o'clock Saturday morning, 15th April.

Thomas Price. On Sunday afternoon, 16th of April, I picked up a coat in a piece of

woods that lies between Fort Bunker Hill and Fort Saratoga.

This is the coat. It is a white and brown mixed cloth; discovered traces of blood on the sleeve, that is how I recognize it; found it about three miles from the city, in the direction of the Eastern Branch.

Colonel H. H. Wells. Had the prisoner, Payne, in my custody on 17th April, the night of his arrest. He had on a dark-gray coat, a pair of black pants, and something that looked like a skullcap. Took off his coat, shirt, pants, vest, and all his clothing the next day on board the monitor. He had on a white linen shirt and a woolen undershirt, minus one sleeve; a pair of boots with a broad inkstain on them on the inside.

(A box containing various articles of clothing was exhibited.)

These are the articles. There is a distinct mark on them by which I recognize them. I described to the prisoner at the time what I supposed was his position when he committed the assault, and told him I should find blood on the coat sleeve in the inside. Spots of blood were found in the position I described.

I found spots, also, on the white shirtsleeve. Called Payne's attention to this at the time and said, What do you think now? He leaned back against the side of the boat and said nothing.

Asked him where he had got his boots. He said he had bought them in Baltimore and had worn them three months. Called his attention to this falsehood, as it was apparent the boots had only been slightly worn. He made no reply to that.

Cross-examined. I did not

threaten the prisoner at any time. Think it is very possible I called him a liar. Saw stains of blood on the coat that was brought to me from Fort Bunker Hill; called the prisoner's attention to the fact, and said, How did that blood come there? He replied, It is not blood. I said, Look and see, and say, if you can, that it is not blood. He looked at it and said, I do not know how it came there.

Charles H. Rosch. Was present when the prisoner, Payne, was searched.

(A bundle of articles, including a pair of boots and a pocket compass, was handed to the witness.)

All these articles were taken from the person of that big man there. The pocket compass he handed to Mr. Samson, and Mr. Samson handed it to me. Recognize the boots; they were pulled off in my presence.

Spencer M. Clark. Had one of these boots yesterday for examination. Then discovered the name, which has now mostly disappeared under the effect of the acid I put upon it.

When I received the boot, it had on the inside a black mark, made apparently to cover writing. Examined it with a microscope and found that it was one coat of ink overlaid on another. The name appeared to me to be J. W. Booth. The J and W were distinct; the rest of the writing was obscure. Cannot speak positively of a thing that is in itself obscure, but it left very little doubt upon my mind that the name was Booth.

Cross-examined. Have charge of the engraving and printing in the Treasury Department. I

took off the outer coat of ink by the use of oxalic acid.

The boot was told me had belonged to Payne. Expected to find the name Payne, but I discovered the th at the end, when the name Booth came to my mind. That was before I had clearly determined upon the B. Should hesitate to swear positively to anything so obscure as an obliterated signature, but entertain very little doubt that the name is J. W. Booth.

Edward Jordan. Am a solicitor of the Treasury. I was requested to look at the ink marks on that boot after it had been subjected to chemical preparations by Mr. Clark. By examining the writing through a glass, came to the conclusion that the name written there was J. W. Booth.

Stephen Marsh. That boot was shown to me yesterday. At first I could make out J. W. B—h, then I thought I could trace a t next to the h; thus: J. W. B—th. Could not be positive as to the intervening letters; examined them only with the naked eye, but in regard to the letters I have mentioned, have no doubt at all. In the intervening space,

between the B and th, there was room for two or three letters.

Lieutenant John F. Toffey. On the 15th April, a little after 1, was going to the Lincoln Hospital, where I am on duty; saw a dark bay horse, with saddle and bridle on, standing at Lincoln Branch Barracks. The sweat was pouring off him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. Kept it there until the cavalry picket was thrown out, when I reported the fact. Was ordered to take it to General Angur's headquarters.

Should think that was the saddle; know the stirrups. Found that the horse was blind of one eye. Whether he had fallen or not I do not know; noticed that he was a little lame. Have been to General Angur's stables and recognized the horse I found.

Louis J. Weichmann. see pp. 220, 433.

Miss Anna E. Surratt. see pp. 238, 433.

Miss Honora Fitzpatrick, see pp. 230, 239, 433.

John T. Holahan, see p. 243.

Mrs. Eliza Holahan, see p. 240.

Major H. W. Smith, see p. 230.

Capt. W. M. Wermerskirch, see p. 232.

R. C. Morgan, see p. 231.

THE DEFENSE.

Miss Margaret Branson. Live in Baltimore. First met the prisoner, Payne, at Gettysburg, immediately after the battle. Was a volunteer nurse, and he was in my ward. He was very kind to the sick and wounded. Do not know that he was a nurse, nor do I know that he was a soldier.

He wore blue pants, no coat and a dark slouch hat. He went there by the name of Powell, and by the name of Doctor. The hospital contained both Confederate and Union soldiers. Saw him again some time that fall or winter, at my mother's house; had very little conversation with him.

Mr. Doster. Did he say to you where he was going?

Assistant Judge Advocate Bingham. The witness need not state; what he said to her is altogether incompetent evidence.

Mr. Doster. I intend to set up the plea of insanity, as I have

already stated, in the case of the prisoner, Payne. It is very true that, under all other pleas, declarations of this kind are not considered competent evidence for the defense, but the declaration of a person suspected of insanity is an act, and therefore admissible.

Assistant Judge Advocate Bingham. That is all very true; but the proper way to get at it is to lay some foundation for introducing the declarations in support of the allegation that the party was insane. In this case no foundation has been laid.

Mr. Doster. I claim that the whole conduct of the alleged murderer, from beginning to end, is the work of an insane man, and that any further declarations I may prove, are merely in support of that theory and of that foundation as laid by the prosecution.

Assistant Judge Advocate Bingham. According to that, the more atrocious a man's conduct is, the more he is to be permitted to make a case for himself by all his wild declarations, of every sort and to everybody, at every time and at every place. If he only manages to get a knife large enough to sever the head of an ox as well as the head of a man, rushes past all the friends of a sick man into his chamber, stabs him first on one side of the throat and then on the other, and slashes him across the face, breaks the skull of his son, who tries to rescue him, yelps, I am mad! I am mad! and rushes to the door and mounts a horse which he was careful to have tied there, he may thereupon prove all his declarations in his own defense, to show that he was not there at all.

Mr. Doster. It is claimed here that there is no foundation laid for the plea of insanity. In the first place, all the circumstances connected with the assassination show the work of insane men. The entrance into the house of Mr. Seward was by a stratagem which is peculiarly indicative of insane men. Then the conduct of Payne, after he entered the house, without the slightest particle of disguise, speaking to the negro for five minutes—a person that he must know would be able to recognize him again thereafter; the ferocity of the crime, which is not indicative of human nature in its sane state; his leaving all the traces which men usually close up behind him. Instead of taking away his pistol and his knife and his hat, he walks leisurely out of the room, having plenty of time to take these away, and abandons them; he takes his knife and deliberately throws it down in front of Mr. Seward's door, as though anxious to be detected; and then, instead of riding off quickly, as a sane man would under the circumstances, he moves off so slowly that the negro tells you he followed him for a whole square on a walk; and afterward, instead of escaping either to the north, on the side where there were no pickets at the time (for it was shown he had a sound horse) or instead of escaping over the river, as he had ample opportunity of doing—because if he could not get across the Anacosta Bridge, he might have swam the river at any point—he wanders off into the woods, rides around like a maniac, abandons his horse, takes to the woods, and finally comes back to the very house which, if he had any sense, he knew must be exactly the house where he would

be arrested—where there were guards at the time, and where he must have known, if he had been sane, that he would immediately walk into the arms of the military authorities. He goes to this house in a crazy disguise; because who in the world ever heard of a man disguising himself by using a piece of his drawers as a hat, supposing that a sane man would not discover the disguise? Finally, there is the conduct of this person since he has been here on trial—the extraordinary stolidity of this man, as opposed to the rest of the prisoners; instead of showing the slightest feeling, he has displayed an indifference throughout this trial. You yourselves noticed that at the time of that solemn scene, when the negro identified him, he stood here and laughed at the moment when his life was trembling in the balance. I ask you, is that the conduct of a sane man? There are, besides, some physical reasons which go hand in hand with insanity, and corroborate it, of a character more delicate, and which I cannot mention now, but which I am prepared to prove before the Court at any time. I say that the most probable case of insanity that can be made out has been made out by the prosecution, in the conduct of this prisoner before the assassination, during the assassination, at the time of his arrest, and during the trial.

Mr. Clappitt. I do not rise for the purpose of denying to the counsel for the accused, Payne, the right to set up the plea of insanity, or any other plea that he thinks proper; but I do rise for the purpose of indignantly proclaiming that he has no right to endeavor to bring before this Court the house of Mrs. Surratt as a rendezvous to which Payne would naturally resort. There is no evidence which has shown that he would naturally go to her house for the purpose of hiding or for the purpose of screening himself from justice.

The COMMISSION sustained the objection of the *Judge Advocate*.

Miss Branson. Do not know where he went to from my mother's. In January of this year he came again to our house. He was dressed then in citizen's dress of black, and represented himself to be a refugee from Farquier County, Va., and gave his name as Payne. He took a room at my mother's house, stayed there six weeks, and left in the beginning of March. He never, to my knowledge, saw any company while there. Never saw J. Wilkes Booth and do not know that he ever called upon Payne.

Margaret Kaighn. Am servant at Mrs. Branson's. Prisoner, Payne, came there last January

or February and remained till the middle of March. He asked a negro servant to clean up his room and she gave him some impudence, and said she would not do it. She called him some names, and then he struck her; he threw her on the ground and stamped on her body, struck her on the forehead, and said he would kill her.

Dr. Charles H. Nichols. Am a doctor of medicine, and superintendent of the Government Hospital for the Insane for 13 years. The bulk of the patients I treat are composed of sailors and soldiers. Moral insanity is when the moral or affective fac-

ulties seem to be exclusively affected by disease of the brain. Insanity is oftener caused by physical disease than moral causes, and that the fact that insanity takes the form of moral insanity is apt to depend on the character of the individual before he becomes deranged. Active service in the field among soldiers is a cause of moral insanity, but not a frequent cause. Insanity has increased very much in the country and in our hospital during the present war. It is caused by the diseases, hardships and fatigues of a soldier's life, to which the men were not accustomed until they entered the service. The cases are as diverse as the individuals affected. If a man, for example, believes an act to be right which he did not believe to be right when in health, and which people generally do not believe to be right, I regard that as a symptom of moral insanity. I would say that it is not impossible, but it is infrequent for madmen to confederate in effecting their plans. If one, apparently sane and without provocation or cause, commits a crime, I should regard it as giving rise to a suspicion of insanity, but not of itself a proof of it. No single condition is a proof of insanity in every instance, but an entire departure from the usual conduct of man would be considered as affording strong ground to suspect the existence of insanity.

Mr. Doster. If one should try to murder a sick man in his bed, without ever having seen him before, would it not be presumptive proof of insanity? It would give rise, in my mind, to the suspicion that a man was insane. I

should not regard it as proof. If the same person should besides try to murder four other persons in the house without having seen them before, would it not strengthen that suspicion of insanity? I think it would. If the same person should make no attempt to disguise himself, but should converse for five minutes with a negro servant, walk away leisurely, leave his hat and pistol behind, throw away his knife before the door, and ride away so slowly that he could be followed for a square by a man on foot, would not such conduct further corroborate the suspicion of insanity? I think it would. It is a peculiarity of the insane, when they commit criminal acts, that they make little or no attempt to conceal them; but that is not always the case. If the same person should cry out, while stabbing one of the attendants, I am mad, I am mad, would it not be further ground for suspicion that he was insane? Such an exclamation would give rise, in my mind, to an impression that the man was feigning insanity. Insane men rarely make such an exclamation, or a similar one, and they rarely excuse themselves for a criminal act on the ground that they are insane. If the same person that I have mentioned should, although in the possession of a sound horse, make no effort to escape, but should abandon his horse, wander off into the woods, and come back to a house surrounded with soldiers, and where he might expect to be arrested, would that not be additional ground for the suspicion that he was insane? I should regard every act of a man who had committed a crime, indicating that he

was indifferent to the consequences as a ground for suspecting that he was insane. If the same person should return to this house I have spoken of, with a piece of his drawers for his hat, at a time when he saw the soldiers in its possession, would not that be additional proof of insanity? I can hardly see what bearing that would have upon the question of insanity. I understood you to say before that madmen seldom disguise themselves. The disguise in question consisted of a piece of drawers being used for a hat. I ask whether that disguise may properly be presumed to be the disguise of a sane man or an insane man? It would depend upon circumstances. It is a common peculiarity of insane men, that they dress themselves in a fantastic manner; for example, make head-dresses out of pieces of old garments. They do it, however, apparently from a childish fancy for something that is fantastic and attracts attention; and I do not recollect a case of an insane person dressing himself in a garment or garments of that kind for the sake of disguising himself. If this same person, after his arrest, should express a strong desire to be hanged, and express great indifference of life, would that be additional ground for suspicion of insanity? I think it would. Would it be further ground for suspicion if he seemed totally indifferent to the conduct of his trial, laughed when he was identified, and betrayed a stolidity of manner different from his associates? I think it would. Is long-continued constipation one of the physical conditions that accompany insanity? Long-con-

tinued constipation frequently precedes insanity. Constipation is not very frequent among the actual insane. If the same person, during his trial and during his confinement, never spoke until spoken to, at a time when all his companions were peevish and clamorous; if he never expressed a want when all the rest expressed many; remained in the same spirits when the rest were depressed; retained the same expression of indifference when the rest were nervous and anxious, and continued immovable, except a certain wildness in his eyes, would it not be considered additional ground for believing in his insanity? I think it would. If this same person, after committing the crime, should, on being questioned as to the cause, say he remembered nothing distinctly, but only a struggle with persons whom he had no desire whatever to kill, would not that be additional ground for suspicion of insanity? I think it would. Are not instances of insane delusion more frequent during civil war than any other kind of insanity? My impression is, that cases in which delusions are entertained are not as frequent. Insanity is of a more general character—so far as my experience goes, has been during the war, among soldiers—than it usually is. Does or does not constant dwelling on the same subject lead to an insane delusion? It frequently does, I think. If a body of men, for instance, who owned slaves, were constantly hearing speeches and sermons vindicating the divine right of slavery, burned men at the stake for attempting to abolish slavery, and finally took up arms to defend slav-

ery, when no man was really attacking it, would not that be evidence that some of these men were actually deluded? I think it would; but it does not follow that the delusion is what I technically denominate an insane delusion, arising from disease of the brain, for which a man is not responsible. If one of those same men who owned slaves, and believed in the divine origin of slavery, and had fought in its defense of his home and friends, should attempt, on his own motion, to kill the leaders of the people who he believed were killing his friends, would not that conduct be esteemed a fanatical delusion?

Assistant Judge Advocate Burnett. Unless Mr. Doster can give us some idea when this species of examination will be brought to a close, we must here interpose objection. It certainly has nothing whatever to do with the case. He is imagining facts that do not exist, and he is examining upon a basis that he has not laid, and it is certainly irrelevant and foreign to the issue. Will Mr. Doster state if he is nearly through with his examination?

Mr. Doster. The course of examination that I propose is not a great deal longer. I mentioned the other day that it was impossible for me to secure the attendance of witnesses from Florida. Regularly, I ought not to have called Dr. Nichols before these witnesses had been here and had been examined. I have been unwilling to detain Dr. Nichols here, and have endeavored to go over the whole ground with him, so that I need not call him twice, as I would have to do if I were

to call these witnesses from Florida first.

Dr. Nichols. If I may be allowed, I would like to give an explanatory answer. I have given just a categorical one to all the questions that have been asked me, I believe; I am, personally, and as an expert, very much opposed to giving an opinion in respect to hypothetical cases, for the simple and best of reasons, as I conceive that I have none, and I could give no definite opinion upon the facts implied in the questions submitted to me. Every case of insanity is a case of itself, and has to be studied with all the light that can be thrown upon it, and it is impossible for me to give an opinion upon a hypothetical case.

Dr. James C. Hall. This morning I spent three-quarters of an hour in an examination of the prisoner, Lewis Payne. First examined him with regard to his physical condition. His eye appeared to be perfectly natural, except that it appeared to have very little intellectual expression; but it was capable of showing a great deal of passion and feeling. Discovered a remarkable want of symmetry in the two sides of his head. The left side is much more developed than the right. His pulse I counted twice carefully; I found it to be a hundred and eight, which is about thirty strokes above a natural healthy pulse. In other respects his health seemed to be good, with the exception of another habit, which, I believe, the Court is informed of—namely, constipation. His general muscular development is perfectly healthy. Questioned him first to test his memory. He appeared to an-

swer my questions willingly, but his mind appeared to be very inert, and it took some time before he would give me an answer to a very simple question, though he did not seem to be at all reluctant in giving me the information I was seeking for. His intellect appears to be of a very low order; and yet I could not discover that there was any sign of insanity. His mind is naturally dull and feeble, and, I presume, has not been cultivated by education. Asked him certain questions which I thought would draw out his moral nature and feelings, and the conclusion to which I came was, that he would perform acts, and think himself justified in so doing, which a man of better moral nature and of a better mind would condemn. I mentioned his as a supposed case, and he said he thought a person in performing such an act as I described would be justified. I wish you would give me some reason, I said, why you think he would be justified; why you think an act which I think wrong, and which everybody else thinks wrong, could be justified. His answer amounted to this, that he thought in war a person was entitled to take life. That was the reason he assigned why he thought such an act could be justified. From the whole examination there was reasonable ground for suspicion of insanity. No man could, if he were perfectly sane, exhibit the utter insensibility that he does and did in my presence. Do not think there was any attempt at deception. He answered the questions, so far as his mind would permit him, plainly and clearly, without any attempt at deceiving me

or misleading me. Cannot give a positive opinion that he is laboring under either moral or mental insanity. To decide on a case of this kind, one ought to see the person at various times and under various circumstances. Never saw this man before.

Cross-examined. Cannot discover any positive signs of mental insanity, but of a very feeble, inert mind; a deficiency of mind rather than a derangement of it; a very low order of intellect. His memory appears to be very slow in acting. Where a man commits crime habitually and without any adequate motive or provocation, I should be disposed then to suspect insanity. If there is an absence of motive and an absence of provocation, and if it is done habitually, these are the conditions. A single act I should be very reluctant to form an opinion on. If a man, engaged in arms as a rebel against the Government of his country, is found assassinating its Chief Magistrate and the members of its Cabinet, might think he had sufficient motive and a sufficient justification for it. Whether Payne is sufficiently sane to be a responsible being for his acts, have not altogether made up my mind on that. Do not think that the single examination which I have made would suffice to decide the question. Think there is enough to allow us a suspicion that he may not be a perfectly sane and responsible man. Can give no positive opinion on that point. His intellect is very feeble and inert. He was perfectly calm and at times smiled. He did not seem to be playing a part at all. He appeared to answer the questions honestly and truth-

fully, so far as I could judge; but his memory is very slow, and it is very difficult to get from him an answer to a very simple question. Asked him in regard to his birth and his residence. He could not remember the maiden name of his mother. He said her first name was Caroline, but he could not remember her maiden name. I have known sane persons who forgot their own names. The celebrated John Law of this city would go to the post office and be unable to call for a letter in his own name.

John B. Hubbard. Am in charge of the prisoner, Lewis Payne, and have had conversation with him. Was taking him out of the court room and he said he wished they would make haste and hang him; that he was tired of life, and would rather be hung than come back here in the court room. About a week ago he spoke to me about his constipation; he said he had been constipated ever since he had been here.

John E. Roberts. Am on duty around the prison, but have no special charge of the prisoner. After the coat and hat were taken off him, on the day Major Seward was examined, had to put his irons back on him, and he told me then that they were tracking him pretty close, and that he wanted to die.

Colonel W. H. H. McCall. Have charge of the prisoner, Payne, in connection with Colonel Frederick and Colonel Dodd. He has been constipated from 29th April until last evening. Never had any conversation with him on the subject of his death.

Mr. Doster. I am about to call two witnesses, and to prevent any objections being made, I will

state that the reason for calling them is to show that the prisoner, Payne, three months before the alleged attempted assassination of Mr. Seward, saved the lives of two Union soldiers. It is the very essence of insanity that one violates the even tenor of his previous life; and, therefore, if I can show that three months before the alleged attempted assassination this person exercised a degree of honor and benevolence, which he afterward violated and turned into ferocity and malignity, it will give a high degree of probability to the plea, and his subsequent conduct can only be explained by his being under the control of fury and madness.

Mrs. Lucy Ann Grant. Live on the Waterloo Pike, Warrenton, Virginia. Saw one of the prisoners before (Payne). Saw him about Christmas in the road in front of our house, in charge of three Union prisoners. Some men—rebel soldiers, I suppose, from their uniform, were going to kill these prisoners, and I remember seeing this man try to prevent it. He told them that he could not defend all, but if they killed or captured the one he had in charge, they would do it at the peril of their lives. They left the road, and I do not know what became of them afterward; I know one of the prisoners was killed, for a Confederate soldier wanted to bring him into my house, and I was scared nearly to death.

Cross-examined. Never saw the man before or since; but he is the same man, am certain. Should know him anywhere. He was dressed in a dark gray uniform, and some of the men called

him Lieutenant. I understand from a citizen to whom I was speaking about his trying to save those Union prisoners that his name was Powell.

John Grant. Am the husband of Mrs. Grant. Was about three hundred yards from my home,

when the affray began in front of my house, on the first of January. Rushed home as quickly as I could when the pistol firing commenced; and I saw that that man (Payne), whose name I understood was Powell, saved the lives of two Union soldiers.

IN REBUTTAL.

Surgeon-General J. K. Barnes. In association with Dr. Hall and Surgeon Norris, have made an examination this morning of the prisoner, Payne, and find no evidence of insanity—none whatever. The evidences of sanity which struck me as present in his case are his narrative of himself, of the places he has been at, of his occupation, the coherence of his story, and, the most important evidence, his reiteration of his statements of yesterday and of his first examination this morning. That is considered a very severe test. It is called the Shakspearean test, and is one of the severest.

Cross-examined. Should consider the Shakspearean test a test for both moral and mental sanity. Have not of late years had a large experience in cases of insanity; but some years ago I was in charge of the insane wards of a large hospital. Was present when the prisoner answered Dr. Hall's question as to his moral responsibility for this crime, and heard him say that, under certain circumstances, he considered such a crime justifiable.

Dr. James C. Hall (recalled). This morning, in connection with Dr. Norris and Dr. Porter, we had an examination of the prisoner, Payne, and since the recess Dr. Barnes, the Surgeon-General, joined us, and we examined

him again. Asked him very nearly the same questions I proposed to him yesterday, for the purpose of seeing whether he would give me answers consistent with those which I then received, and I found that they were very accurately the same, and he answered today with rather more promptness than yesterday. Think I am now prepared to say that there is no evidence of mental insanity. Payne's mind is weak and uncultivated, but I can not discover any sufficient evidence of mental insanity.

Cross-examined. We asked him the question today whether he believed in a God. He said he did, and that he believed he was a just God. He also acknowledged to me that at one time he had been a member of the Baptist Church. Asked him the question, which I believe I repeated to the Court yesterday, whether he thought that private assassination, practiced upon an enemy in public war, was justifiable. After some little hesitation, he said that he believed it was. It is an evidence of a fanatical delusion that a person believes to be right what everybody else believes to be wrong; but I can readily conceive that there are persons whose minds and morals are such that they would believe a crime similar to that which he had committed to be

justifiable and proper, even a duty.

Dr. Basil Norris. I am a surgeon in the regular army. This morning, in association with the Surgeon-General and Dr. Hall, made an examination of the prisoner, Payne, and I arrived at the conclusion that he is not insane. His look is natural, and his speech perfectly natural, and his manner natural; that of a man sane. There is nothing in his appearance, or speech, or manner that indicates to me that he is a man of unsound mind. There is nothing to indicate the presence either of moral or what may be called mental insanity. We asked him a number of questions. His reasoning faculties appeared to be good, and his judgment good, to which I attach great importance. We could not learn of anything in his past life, so far as we have been able to gather his history, that would indicate insanity. We learned but very little of his past history; but so far as his life has been disclosed since he has been here, his conduct and conversations, nothing that he has done, has indicated to me that he was an insane man.

Cross-examined. Am not familiar with cases of insanity, but I have visited institutions for the insane. It is not usual for madness to escape the scrutiny of physicians on a single interview,

or on two interviews. I think there is something always in the appearance of a man, in his manner or in his speech, that would arouse a suspicion of a physician, or indeed of any intelligent person, even on one interview. Have heard of cases of men who have been examined for months at a time before their madness was discovered, but none have come to my knowledge. I do not think the conduct of the prisoner in my presence was the conduct of a madman during a lucid interval.

George L. Porter. Was associated with Surgeon-General Barnes and other medical gentlemen in an examination of the prisoner, and our conclusion was that he was a sane man, and responsible for his actions. He has been under my eye ever since he has been confined here. Have made inspections twice each day since the 30th of April; and his conduct and conversation during that period have been such as to impress me that he is a sane and responsible man. Have not observed any indication of insanity.

Cross-examined. Believe that the law does not recognize moral as distinct from mental insanity. Moral insanity is where the mind of a person is perverted on moral subjects; mental insanity has regard to the intellectual more than the moral faculties.

MR. DOSTER, FOR THE DEFENSE.

Mr. Doster. May it please the Court: I. There are three things in the case of the prisoner, Payne, which are admitted beyond cavil or dispute:

1. That he is the person who attempted to take the life of the Secretary of State.

2. That he is not within the medical definition of insanity.

3. That he believed what he did was right and justifiable.

The question of his identity and the question of his sanity are, therefore, settled, and among the things of the past. The sole question that remains is, how far shall his convictions serve to mitigate his punishment? I use the word punishment deliberately, and with the consciousness that in so doing I admit that if he is a responsible being he ought to be punished. And I say it, because I cannot allow my duties as counsel to interfere with my convictions as a man so far as to make me blind to the worth of the life of a distinguished citizen, and the awful consequences of an attempt to take it away. If, indeed, such an attempt be allowed to go without rebuke, then it seems to me the office is but a perilous exposure to violence; then the highest compensation for public services is the distinction which follows assassination, and then our public servants are but pitiable and defenseless offerings to sedition. And surely, if any public servant deserved to be excepted from that fate, it was he, the illustrious and sagacious statesman who, during a long life of arduous services, has steadfastly checked all manner of factious and public discontent; who, in the darkest days of discord, has prophesied the triumph of concord, and who at all times has been more ready to apply antidotes than the knife to the nation's wounds. How far, then, shall the conviction of the prisoner that he was doing right go in extenuation of his offense? That we may accurately, and as fully as the occasion demands, understand the convictions of the prisoner, I invite your attention to a sketch of his life, the customs under which he was reared, and the education which he received. Lewis Thornton Powell is the son of the Rev. Geo. C. Powell, a Baptist minister, at present supposed to live at Live Oak Station, on the railroad between Jacksonville and Tallahassee, in the State of Florida, and was born in Alabama, in the year 1845. Besides himself, his father had six daughters and two sons. He lived for some time in Worth and Stewart counties, Georgia, and in 1859 moved to Florida. At the breaking out of the war, but four years ago, the prisoner was a lad of six-

teen, engaged in superintending his father's plantation and a number of slaves. We may safely presume that, occupied in the innocent pursuits of country life, he daily heard the precepts of the Gospel from his father; that, in the society of his sisters, the hardy life of a planter was softened by the charms of a refined and religious circle, and that, in the natural course of events, he would be today, as he was then, a farmer and an honest man. But, in 1861, war broke out—war, the scourge and pestilence of the race. The signal, which spread like a fire, was not long in reaching Live Oak Station. His two brothers enlisted, and Lewis, though but sixteen, enlisted in Capt. Stuart's company, in the Second Florida Infantry, commanded by Col. Ward, and was ordered to Richmond.

Let us pause a moment in this narrative, and consider what, in the eyes of this Florida boy, was the meaning of war, and what the thoughts that drove him from a pleasant home to the field of arms. At another time I might picture to you the scene, but too familiar, of his taking leave; a mother, like the mothers of Northern boys, shedding tears, less bitter, because she was dedicating a son to her country; sisters, whose sorrow, like the sorrow of the sisters of Northern boys, was alleviated with pride that they had a brother in the field; the father's blessing; the knapsack filled with tributes of affection, to be fondled by distant bivouac fires, and the heavy sigh, drowned in the rolling of the drum. But this is not a stage for effect. We know this was mistaken pride and sorrow in a mistaken cause, though the object of them was a son and brother, and we must not consider them, though the boy was but sixteen when he launched on the terrible sea of civil war.

In the State of Florida were two separate races—one white and the other black—of which the one was slave to the other, and Lewis belonged to the race which was master. It was a custom of this state for masters to whip their slaves, sell them, kill them, and receive the constant homage which the oppressed offer to the powerful. It was the custom of this state to whip and burn men who preached against the custom.

It was the custom to defend this institution in meeting houses, at political gatherings, in family prayers. It was the custom to hunt fugitives with bloodhounds—even those who tried to help them to freedom.

In this custom the prisoner was bred; education made it a second nature; politicians had taught him to find it in the Constitution, preachers had taught him to find it in the Bible, the laws taught him to regard it as property, habit had made it a very part of his being. In the eyes of the lad, the war meant to abolish this custom and upheave society from its foundations. His inheritance was to be dissipated, his vasals equals, his laws invaded, his religion confounded, his politics a heresy, his habits criminal. Hereafter, to strike a slave was to be an assault, to sell one felony, to kill one murder. For this, then, the lad was going to fight—the defense of a social system. That was the reason. It was a traditional political precept of the state in which the prisoner lived, that the state, like its elder sisters, had reserved the right of divorcing itself at pleasure from the Union, and that great as the duty of a citizen might be to the Union, his first duty was to Florida. Schoolmasters taught that the relative rights of State and Nation had been left unsettled; politicians taught that the local power was greater than the central, and in support of it men were sent to Washington. The war, in the eyes of the boy, meant to reverse this, to subordinate the State to the Nation, the Governor to the President, Tallahassee to Washington City. And, therefore, he was going to fight; to defend State rights. That was the second reason.

It was a deep-seated conviction of the people in this State that their blood and breeding were better than the blood and breeding of Northerners; that they had more courage, more military prowess, and were by nature superiors. This conviction the war threatened to overthrow, this boast the war was to vindicate, this superiority was, by the war, intended to be proved. And this was the third reason he was going to fight—to show that he was a better man than Northerners.

There was a frantic delusion among these people that Northern men were usurping the Government, were coveting their

plantations, were longing to pillage their houses, ravage their fields, and reduce them to subjection. The war was to defend mother, sister, home, soil, and honor, and beat back an insolent invader. This was the fourth reason—to repel invasion. These were, in the mind of this lad, the incentives to war. Let us not pass unnoticed how he was schooled in the instincts and morals of war. Under the code of slavery we know that the murder of a companion with a bowie knife or in a duel was an index of spirit; the torture of negroes evidence of a commanding nature; concubinage with negroes a delicate compliment to wives; spending wealth earned by other men in luxuriance chivalric; gambling the sweet reprieve for confinement to plantations. Instead of morals had sprung up a code of honor—perhaps a false, but surely an exacting and imperious code, that kept bowie knives in the belt and pistols in the pocket, and had no hesitation in using them when slavery was assailed, and a code that remembered friends and never forgave enemies. These, then, were the morals and instincts of the lad—it is right to kill negroes, right to kill abolitionists; it is only wrong to break promises, to forget a friend, or forgive an enemy; and to do right is to be ready with bowie knife and pistol.

Now let me ask whether in the wide world there is another school in which the prisoner could so well have been trained for assassination as in this slave aristocracy? The stealthiest Indian that ever shot from ambush was not so well instructed in the social use of his knife; the deadliest Gheber that ever strangled his victim had not the animosity which comes from power in danger of losing its slaves, nor the cheap regard for human life which comes from trading in and killing slaves. All the horrible accomplishments of assassination, which Machiavel says are three—"fierceness of nature, resolute undertakings, and having had one's hand formerly in blood," are his by religion, by politics, by law, by education, and by custom. And who is responsible for this training of the lad? Standing, as we do today, at the end of a four years' war, having just heard again recited tales of prisoners starved, cities infected, cities burned, prisons undermined—things that

seem unparalleled in the barbarity of all ages—and all by men who, four years, ago, sat side by side with us, and seemed no different, we now know, what we never dreamt of, that this is the spirit of slavery, stripped of its disguise. In rebellion we now recognize the master never taught to obey; in arson of cities we see again the fagot and the stake; in Libby and Andersonville we see again the slave pen; in captures the bloodhounds and the lash; in assassination the social bowie knife and pistol; and in this prisoner the legitimate moral offspring of slavery, State rights, chivalry and delusion.

But who is to blame that he, with five millions more, was so instructed, so demoralized, so educated to crime? Is it his father and mother? They found their precepts in the Bible; they gave their son but the customs they had themselves inherited. Is it the society of Florida? It was a society that ruled this country until within four years, and occupied the seats of Government. Is it the laws of Florida? They were but rescripts of the Constitution. Is it the Constitution? That is but the creation of our forefathers. Who, then, is responsible that slavery was allowed to train assassins? I answer, it is we; we, the American people; we who have cherished slavery, have compromised with it, have for a hundred years extended it, have pandered to it, and have at last, thanks to God, destroyed it. Let us, then, not shrink from our responsibility. If there be any Southerner here who has sought to foster slavery, he is in part father of the assassin in this boy. If there be any Northerner here who has been content to live with slavery, he is also in part father of the assassin in this boy. If there be any American that has been content to be a citizen of a slaveholding republic, he is part father of the assassin in this boy. Nay, all of us—such as he is we have made him—the murderous, ferocious and vindictive child of bygone American Constitution and laws. And what is to be the fate of our offspring? Let us see. That it is criminal, let us reform it; that it is deluded, let us instruct it. But let us not destroy it, for therein we punish others for our own crimes. Let the great American people rather speak thus: “For twenty years we have sent you to a wicked

school, though we knew not the wickedness thereof, until our own child rebelled against us. Now we have torn down the school house and driven out the master. Hereafter you shall be taught in a better school, and we will not destroy you, because you learnt but as instructed.”

II. But there is another school before him—the school of war. At Richmond his regiment joined the army of General Lee, and was joined to A. P. Hill’s corps; with it he shared the fate of the rebel army, passed through the Peninsular campaign, the battles of Chancellorsville and Antietam. Here he heard that his two brothers were killed at Murfreesboro. Finally, on the 3rd of July, 1863, in the charge upon the Federal center, at Gettysburg, he was wounded, taken prisoner, and detailed as a nurse in Pennsylvania College Hospital.

Let us pause again to consider the effect of two years’ campaigning as a private in the army of General Lee upon the moral nature of the accused. He was one of that army who made trinkets and cups out of the bones of Union soldiers—an army where it was customary to starve prisoners by lingering agonies, which supplied its wants by plundering the dead, which slew men after surrender, that was commanded by officers who had violated their sacred oaths to the United States, and who taught their subordinates that such violation was justifiable; an army who were taught by Jackson that God was the champion of their cause; an army that held the enemy in quest of “booty and beauty;” an army which believed no means that helped the cause of Southern independence unjustifiable, but glorious; an army who for two years explained victory by the righteousness of the cause—finally, an army that held the person and Cabinet of the President in holy execration. Surely he could not pass through these two terrible years without being in his moral nature the same as the army of which he formed a part. He is now eighteen, and the last two years have formed his character. He also abhors the President of the Yankees; he also believes that victory comes because God is just; he also believes that nothing is bad so the South be free; he also regards a Federal as a ravisher and robber; he also prays with Jackson to God for the vic-

tory. He further believes in Heaven and General Lee; dresses himself in the clothes of Union dead; stands guard over starving prisoners; also has his cup carved out of some Federal skull. Besides, he has learned the ordinary soldier's lessons, to taste blood and like it; to brave death and care nothing for life; to hope for letters and get none; to hope for the end of the war and see none; to find in victory no more than the beginning of another march; to look for promotion and get none; to pass from death and danger to idleness and corruption; to ask for furloughs and get none, and finally, to despair, and hope for death to end his sufferings. The slave driver has now become a butcher; the slaveholder a pillager; he who found divine authority to support slavery in sermons now finds it in action; he who was led by fanatical politicians is now led by fanatical generals; and he who had once only the instincts, has now the practice and habit of shedding Northern blood. These two years of carnage and suffering, from sixteen to eighteen, when the character is mobile and pliable, and which he would have naturally spent at college among poets and mythologies and tutors, are spent on picket, with fierce veterans, in drunken quarrels, with cards, with oaths, in delirious charges, amid shot and shell, amid moaning wounded and stinking dead, until, at eighteen, he has the experience of a Cambronne, the ferocity of an Attila, and the cruelty of a Tartar. This, gentlemen, is the horrible demoralization of civil war. It makes loyalty a farce, justifies perjury, dignifies murder, instills ferocity, scorns religion and enjoins assassination as a duty. And whose fault is it that he was so demoralized, and so educated in public vices, instead of public virtues, on the field of war? Let us be just, and not shrink from the inquiry. Was it our forefathers who sowed the seed of discord in the charter of Union? If so, then let their memories pay the penalty; but spare the fruit which has involuntarily ripened in the heart of this boy. Was it the Southern leaders? Then let them pay the penalty; but spare their ignorant and misguided tool. Was it Generals Lee and Jackson and Hill, who were his immediate models and tutors in crime? Then punish them; but spare

their pupil. Was it, perhaps, fanatical malcontents among Northern men who first lighted the torch of war? Then extirpate them from the land; but spare the boy whose passions caught fire, and burnt until they consumed him. Rest, then, the responsibility of this war with whom it will—with the living or dead, with the vicissitudes of things or in the invisible plans of God—it is not with this plastic boy, who came into the world in the year of the annexation of Texas, has lived but four administrations, and is younger than the last compromise with slavery. He is the moral product of the war, and belongs to them who first began it.

Now, I hear it said, true, the boy has been a rebel soldier, and we can forgive him; but we cannot forgive assassins. Let us, for a moment, compare a rebel soldier with the prisoner, and see wherein they differ. The best rebel soldiers are native Southerners. So is he. The best rebel soldiers have for four years longed to capture Washington, and put its Government to the sword. So has he. The best rebel soldiers have fought on their own hook, after the fashion of the provincials during the Revolution, finding their own knives, their own horses, their own pistols. So has he. The best rebel soldiers have fired at Mr. Lincoln and Mr. Seward, have approached the city by stealth from Baltimore, and aimed to destroy the Government by a sudden blow. So has he. The best rebel soldiers have picked off high officers of the Government—Kearney, Stevens, Baker, Wadsworth, Lyon, Sedgwick. So has he.

What, then, has he done that every rebel soldier has not tried to do? Only this: He has ventured more; he has shown a higher courage, a bitterer hate, and a more ready sacrifice; he has aimed at the head of a department, instead of the head of a corps; he has struck at the head of a nation, instead of at its limbs; he has struck in the day of his humiliation, when nothing was to be accomplished but revenge, and when he believed he was killing an oppressor. As Arnold Vinkelried was braver than all the combined legions of Switzerland, when he

“Felt as though himself were he
On whose sole arm hung victory;”

as Leonidas, who threw himself in the gap of Thermopylæ, was braver than all the Grecian hosts; as Mucius Sævola was the bravest of the Roman youth when he approached Porsena with intent to assassinate, and said: "*Hostis hostem occidere volui; nec ad mortem minus animi est, quam fuit ad cædem. Et facere et pati fortia, Romanum est;*" so was this youth braver than all the rebel hosts when he came to offer up his life by killing the chief of the enemy.

As Harmedius and Aristogeton were more careless of their lives than the rest of the Athenian youth when they killed Hippias and Hipparchus, as Brutus said on the market place: "As I slew my best lover for the good of Rome, I have the same dagger for myself when it shall please my country to need my death;" so was this boy more ready to offer up his life for what he believed to be the good of his country. And as Gerard was the bitterest Catholic of the Netherlands when he slew the Prince of Orange; Ravallac the bitterest enemy of the Protestants when he slew Henry IV; as Jacques Clement was the bitterest Catholic when he killed Henry III; as Orsini was the most bitter Italian when he tried to kill Louis Napoleon, so this boy, remembering his two slaughtered brothers, was the bitterest Southerner of all that defied the Government.

Courage, then, martyrdom, inextinguishable hate for oppression, are his sins. Now, if courage be a crime, then have you and I, and all of us, who have braved death, been criminals? Then are the emblems of valor, which a grateful country has placed upon your shoulders and breasts, but marks of crime. Is readiness to be sacrificed for the common good a crime? Then are the millions of heroic youths, who have left the plow and girded on the sword for four years, but criminals; then is our banner but the flag of crime; then are our battlefields but loathsome scenes of general fratricidal murder. Is, then, undying hatred for what is believed to be oppression a crime? Then was our Revolution but successful crime. Then were the struggles of Tyrol, of Hungary, of Venice, of Greece, but unsuccessful crimes. Then was Byron a traitor to Greece, Garibaldi a traitor to Austria, Kossuth a

traitor to Austria, Hofer a traitor to Austria, and Washington a traitor to England. Mark, throughout the history of the world, there is no lesson taught in clearer language than that the noblest deed of men is to free the world of oppressors. But I hear a student of history reply: True; but they must have been oppressors. Granted; but who is to be the judge? There can be no one but the assassin himself. It is he, and he only, who takes the risk of becoming a deliverer, or a foul and parricidal murderer. Let us, then, see what these people were, against whom he aimed his blow and what they appeared to him. In truth, if you seek for characters in history, you will find none further removed from the oppressors than our late President and the Secretary of State. The one was the great emancipator, the deliverer of a race from bondage, the great salvator, the deliverer of a nation from civil war. The other was the great pacificator, the savior from foreign war, the uniter of factions, the constant prophet and messenger of good will and peace. This is how they seemed to us; but such were they not in the eyes of this boy, or of five millions of his fellow-countrymen. To them, the one appeared a usurper of power, a violator of laws, a cruel jester, an invader, a destroyer of life, liberty and property; the other a cunning time-server, an adviser in oppression, and a slippery advocate of an irrepressible conflict. These Southern men had long borne power, and, in their obscurity, felt the envy for greatness which once cried:

“Ye gods! it doth amaze us,
A man of such a feeble temper should
So get the start of the majestic world
And bear the palm alone.”

* * * * *

“Why man, he doth bestride the narrow world
Like a colossus, and we petty men
Walk under his huge legs, and peep about
To find ourselves dishonorable graves.”

This was his idea of Mr. Lincoln and Mr. Seward. This was what he heard in Florida, among the village politicians.

This was what he read in the Richmond papers, in the orders of the generals, in the gossip of the camp fire, in the letters that he got from home. Every farmer by whose well he filled his canteen told him that; every Southern lass that waved her handkerchief toward him repeated it; his mother in mourning told it; every prisoner returned from Northern prisons told it; every wayside cripple but confirmed it. Lincoln, the oppressor, was in the air, it was in the echo of the drum, it was in the whizzing of the shell, it came on every breeze that floated from the North. Wonderful was his error; strange, indeed, is it that charity and liberty should be thus misconstrued. Let us, then, remember that if he was wrong he erred on the side of courage, on the side of self-sacrifice, and on the side of hatred to what he believed to be oppression; that he differs from the Southern army simply because he surpassed it in courage; that he differed from a patriot and a martyr, simply because he was mistaken in his duty.

If, then, you praise men because they kill such as they believe oppressors, you must praise him; if you praise men who are ready to die for their country, you will praise him; and if you applaud those who show any courage superior to the rest of mankind you will applaud him.

III. But there is a third school before him. From Gettysburg he was sent to West Building Hospital, Pratt street, Baltimore, and remained until October, 1863, when, seeing no hope of an exchange, he deserted for his regiment, and, walking through Winchester, met a regiment of cavalry at Fauquier. Not being able to get through our lines, he was joined to this arm of the service, and remained in that service until January 1, 1865. On that day, as we see by the narrative of Mrs. Grant, he saved the lives of two Union soldiers. About the same time he, like many of the Southern soldiers, began to despair of the Confederacy, came to Alexandria, sold his horse, gave his name as Payne, took the oath of allegiance as a refugee from Fauquier, went to Baltimore, took a room at the house of Mrs. Branson, the lady he had met at Gettysburg, and resolved to wait for the return of peace. Now, let us see what he learned in the third school.

The rebel cavalry of Northern Virginia, as we now know, was considered, in the Southern army the *elite* of their horsemen. Dismounted cavalymen of the army of the Potomac were sent to Northern Virginia, remounted and then returned to their commands. In the spirit of war, however, they differed materially from the rest of the Southern forces. First, they came intimately in contact with the people of Loudon and Fauquier, who had suffered most from the war, and whose hatred of Northern troops was more bitter, so that they fought rather from personal hate, and in individual contests, than from political sentiments, and in battle. Accordingly, whatever edge of acrimony was wanting in the temper of Powell he gained at the houses of ruined slaveholders in Leesburg, Aldie, Middleburg and Upperville. It was also the custom of those soldiers, and esteemed honorable from their standpoint, to capture quartermasters and paymasters, lie in wait for bearers of dispatches and important generals, and to make sudden attacks and hurried retreats. Accordingly, if he wanted a certain feline intrepidity in planning and escaping—a capacity to approach by stealth, execute with rapidity, and hurry off before his victims had recovered from their consternation—we may well believe that he learned it in this third school. And who is responsible for the third school? His Colonel? Then let him be punished. His Captain? He is now at liberty. General Lee? Then let him abide the consequences. Jefferson Davis, who commissioned them? Then let the blow fall on him. This boy comes here with no marvelous spirit of fury, that we should wonder and say, where has he learnt all this? Where among men are savages formed like this? He comes here fresh from Northern Virginia, with all its sorrow and all its bitterness. On the tablets of his memory are written curses of many a ruined master; in his ears are ringing the cries of women and children, and the moans of dying men. Before his eyes are visions of burning barns, ravaged fields, a people prostrate, humble, starving, homeless—a land once beautiful, now a barren waste, peopled by famine, disease, and ruin—and these have brought him here to seek a quick revenge. We know that we have

done these things righteously, with malice toward none, for the salvation of the State and for liberty. But the wail of woe and lamentation is not the less piercing; the thirst for a dire, bitter and consuming revenge, is not the less keen. As the woes of Normandy brought Charlotte Corday to the chamber of Marat, as the humiliations of France brought Louvel to the side of the Duke de Berri, as the ravages in Thuringia brought Stapps to Napoleon at Schonbronn, so is the prisoner at the bar the messenger of Virginia's sorrow and bitterness to the chamber of the Secretary of State. And how are we to meet those woes and bitterness and their deluded messenger? In anger? That were only to confess that we were wrong in inflicting them. No; rather let us say, "What we have done was more in love than in hate. Let us forget the past. For your sorrows there is sympathy—for your bitterness there is charity. From henceforward let there be peace, and let the great sacrifice which we have paid you make us forever even."

IV. But there is the fourth school before him—the school of necessity.

Arrived at Baltimore and having taken up his residence with Mrs. Branson, he looked around for something to do. He had no trade or profession. The period in which he would have learned one was spent in the army; and we know how abhorrent it was to men of the South to engage in manual labor; and as his hands attest, he has never engaged in any. Accordingly, in perplexity about his future—for the little money he got for his horse was fast going—he whiled away the time in reading medical books and brooding in his chamber. While in this condition, unable to get home, unable to see how he was to live at Baltimore, the fracas occurred by which he was arrested, brought before the Provost Marshal, and ordered north of Philadelphia.

Picture to yourself the condition of this unfortunate victim of Southern fanaticism, suddenly again cast into the street and exiled from Baltimore, a stranger, sundered from his only friends, in a strange land. He thinks of his own home in far-off Florida, but between him and it are a thousand miles and a rebel army on whose rolls he is a deserter. He thinks

of rejoining that army, but between him and it is a Union army. He thinks of the unknown North into which he is banished, but his fingers refuse the spade; he thinks of a profession, but the very dream of one is now a mockery; he thinks of going where no one knows him, but he fears that after all the curse of secession will follow him; he thinks of eluding the authorities and staying at Baltimore, but then he is afraid of compromising his friends, and leaves them. Everywhere the sky is dark. Among Northern men he is persecuted, for he is a rebel; among Southern men at Baltimore he is despised, for he is a recreant Southerner; among Southern men at home he is a by-word, for he is a deserter. The earth seems to reject him, and God and man to be against him.

Now, if there be any man in this court who has ever wandered penniless, houseless, friendless, in that worst of solitudes, the streets of a strange city, with hunger at his stomach and a great sense of wrong at his heart, in rags, and these very rags betraying him as a thing to be despised and spurned; afraid of meeting at every corner the peering eyes of a Government detective; too proud to beg, and, when hunger overcame pride, rejected with a frown, that man will understand how the prisoner felt in the beginning of March, 1865. If there be any man who has ever been hunted down by misery in his youth, and before much sorrow had made the burden easy, until he wondered why he was born, and hid his face in his hands, praying to God to end his pain forever, he also can understand how, in the fullness of suffering, he has been brother to the accused.

Well, indeed, had it been for him if some angel of mercy had on that day, as he wandered a hungry specter through the streets of Baltimore, with flashing eyes and disordered hair, stretched forth her hand and said: "Here is bread; take, eat, and live." A loaf of bread might have saved him; a single word of kindness might have saved him; the gracious lick of a friendly dog might have saved the glow of a once generous heart from going out forever. We have all, my friends, had these turning points in our lives, and we all reckon back to a time when we stood in the midst of gloom, and suddenly it

was glorious day, for we found a plank and reached the shore. His Creator, in His inscrutable wisdom, thought it good there should be no ray of light, no beckoning hand, no hope for the prisoner. Perhaps it had been better if he had dragged himself to the pier and ended his career in suicide. It was ordered that his very weakness should make him the prey of a human devil. We can already foresee the consequences. He is desperate, anxious for death, only he is a soldier, and he will not die ingloriously, after having faced death an hundred times. He is pursued by the Government in which he had confided, and for which he had deserted his own; pursued, tracked, followed like an outlaw among mankind. He will show that Northern Government that he is not a dog, and that Southern Government that he is not a traitor; and give him but a chance, and he will, with one stroke, pay off the scores he owes the abolitionists, restore himself in the eyes of his comrades in arms, and throw himself into the arms of a pitiful eternity.

And who is to blame that he was urged to desperation and consequent revenge? I answer, this civil war. The civil war took him from the magnolias and orange groves of Florida, and left him a waif upon the pavements of a Northern city. The civil war took the independent farmer from his fields, and left him a beggar among strangers. The civil war took him from honest pursuits and professions, and left him to make his living without any other accomplishments than dexterity in murder. The civil war forbade him a home among Northern men, after it had taken him away from his home in the South. The civil war made him an outcast and a fugitive on the face of the earth; took the bread out of his mouth, and gave him the alternative of dying obscurely by his own hand, or notoriously by the death of a public officer.

V. The education of our farmer's boy is now complete. He has been in four schools. Slavery has taught him to wink at murder, the Southern army has taught him to practice and justify murder, cavalry warfare has taught him to love murder, necessity has taught him resolution to commit mur-

der. He needs no further education! his four terms are complete, and he graduates an assassin! And of this college we, the reunited people of the United States, have been the stern tutors, guides and professors. It needs now only that some one should employ him.

I need not pursue this dolorous history further. You know the rest. If you did not know it, you could infer it from what has gone before. That he should meet Booth at Barnum's Hotel, enter into his plans eagerly, and execute them willingly, are matters of course. That he should care nothing for money, but only for revenge; that he should hate the Lincoln Government like a slaveholder; that he should enter the house of a cabinet officer like a guerilla; that he should try to murder, and justify his murder like a Southern soldier; that he should then give himself up willingly, as one who exchanges the penalties of assassination for suicide; that he should sit here like a statue and smile as one who fears no earthly terrors, and should tell the doctors, calmly and stoically, that he only did what he thought was right—all these things are as certain to follow as use, education and employment necessity.

Now, in considering the condition of Powell at this crisis, I do not ask you to believe he was insane. That is a declaration of mental disease of which I am no judge. I only ask you to believe that he was human—a human being in the last stage of desperation, and obeying self-preservation, nature's first law. It is acknowledged by all that the possession of reason only makes man responsible for crime. Now, there are two ways in which reason is vanquished. One is when the passions make war against reason and drive her from her throne, which is called insanity. Another is when the necessities of the body overcome the suggestions of the mind, a state in which the reason is a helpless captive. And if you find that while his reason was so in captivity, he surrendered to temptation, I am sure you will set it to the credit, not of reason, but of the body, whose wants were imperious while there was yet no reason in it, in childhood, and which will again exist without reason after death.

At the beginning of the war, Powell, one night, secured a pass and went to the theater at Richmond. It was the first play that Powell ever saw, and he was spellbound with that magical influence wielded by the stage over such, to whom its tinsel is yet reality. But he was chiefly attracted by the voice and manner of one of the actors. He was a young man of about twenty-five with large, lustrous eyes, a graceful form, features classical and regular as a statue, and a rich voice that lingered in the ears of those who heard him. Although only a private soldier, Powell considered himself the equal of any man, and after the play was over sought and gained an introduction to the actor. Never were two natures thrown together so different, yet so well calculated, the one to rule, the other to be ruled. The soldier was tall, awkward, rough, frank, generous and illiterate. The actor was of delicate mold, polished, graceful, subtle, with a brilliant fancy, and an abundant stock of reading. Each was what the other was not, and each found in the other an admirer of the other's qualities. The actor was pleased to have a follower so powerful in his muscles, and Powell was irresistibly drawn to follow a man so wondrously fascinating and intellectual. They saw enough of one another to form a close intimacy, and confirm the control of the actor over Powell, and parted, not to meet for nearly four years.

In the twilight of that memorable day in March, which I have described, Powell was dragging himself slowly along the street past Barnum's Hotel—a poor creature overcome by destiny. Suddenly a familiar voice hailed him. Looking up the steps, he saw the face of the Richmond actor. The actor on his side expressed astonishment to find Powell in such a plight—for the light in the eyes of a desperate man needs no translation—and in that distant city. Powell answered him in few words: "Booth, I want bread—I am starving." In ordinary circumstances, I do not doubt but Booth would have said, come in and eat; but just now he was filled with a mighty scheme, for he had just been to Canada, and was lying in wait for agents. So he did not give him to eat; he

did not tell him to go and die, but he seized with eagerness upon this poor man's hunger to wind about him his accursed toils, saying: "I will give you as much money as you want, but first you must swear to stick by me. It is in the oil business." An empty stomach is not captious of oaths, and Powell then swore that fatal oath, binding his soul as firmly to Booth as Faust to Mephistopheles, and went in and feasted. Next morning Booth gave him money enough to buy a change of clothing and keep him for a week. Powell now became anxious to know what plan it was to make him rich, but Booth answered evasively that it was in the oil business. He knew well enough that he had to do with a desperate man, but he knew, also, that any proposition of a guilty character might as yet be rejected. He must get full control of this desperate tool, and instill into his nature all the subtle monomania of his own. Accordingly he proceeded to secure every thought and emotion of Powell. With a master pencil he painted before the eyes of this boy the injuries of the South and the guilt of her oppressors. He reminded him of devastated homes, negroes freed, women ravished, the graves of his brothers on a thousand hillsides. He reminded him that he was a traitor to the Southern cause, and that it was necessary he should regain the favor of his country. He pointed out to him his desperate condition—a fugitive from his friends, and an exile among strangers. He touched him upon his pride, and showed him how he was born a gentleman, and ought to live as a gentleman. He touched upon his helplessness, and showed him that there was no hope for him, in peace or war, in heaven or earth, except by rendering a great service to the South. He touched upon his melancholy, and said if he must die, he should offer up his life in a manner that would bequeath his name as a blessing to posterity. Powell now awoke from the depth of despair to the highest pinnacle of agonized excitement. It was as if he had been breathing that subtle Eastern poison, wherein the victim sees swimming before his eyes a vision of more than celestial felicity, but far off and unattainable. What wonder he swam in dreams of delicious

pain! Instead of that former melancholy, he felt an eager desire to live. Instead of that long torpor, he felt all the old wounds bleeding again, and burned to avenge the South. Instead of laboring like a negro, he saw a vague vision of rolling in boundless wealth. Instead of being cursed by his kinsmen, he was fired with zeal to be cherished as one of her chief martyrs. Instead of being the toy of fortune, he dreamed of being her conqueror. But yet he saw no avenue to all this, and, spellbound as he was, turned to his tormentor, who held him as firmly as ever Genii did their fabled imps, for the explanation, for the means and quick road to happiness. Booth saw his victim was ready, and hastened to impart his mysterious plans. The first plan was to go to Washington, take a ride with confederates, on horseback, to the Soldiers' Home, capture the President, and deliver him to the Rebel authorities. This failed. The second plan was to kill the heads of the State—a plan first broached to Payne on the evening of the 14th of April, at 8 o'clock.

Booth, on the evening of the 14th, at 8 o'clock, told him the hour had struck; placed in his hands the knife, the revolver, and the bogus package of medicine; told him to do his duty, and gave him a horse, with directions to meet beyond the Anacosta bridge; and he went and did the deed. I have asked why he did it. His only answer is: "Because I believed it my duty."

VI. Now, let us not be deceived by the special name of assassination, and confound it with the conscientious killing of what is believed to be an oppressor. When we read of assassination we involuntarily bring to mind examples of men hired by statesmen to make away with princes. There is the Italian perfumer, Rogeri, of Catherine de Medici; there is Orloff, of Catherine, and Alexander, of Russia; we think of the tools used by Tiberius, by Richard III, Philip the II, by Mary of Scotland, by Louis XI, and our minds are filled with associations with State murders accomplished by tigers in human shape killing for gold.

But there is another type of assassination and of so-called

assassins. That comes to pass when a fanatic, religious or political, deems it his duty to offer up his life in exchange for the life he believes to be a public enemy. This is the Sand of Kotzebue, the Corday of Marat, the Count Ankerstroem of Gustavus III, the Brutus of Cæsar, the Gerard of Orange, the Ravallac of Henry IV—men who may ally themselves with others, but who receive their orders immediately, as they believe, from God himself.

The first order kills for money, it is hired by princes, it would for money kill its employer, it uses concealment, it is ashamed, it strikes in masks and dominoes, and when caught gives way to despair. Not so the second order. It glories in its deed, it goes joyfully to its own death, it has commandments from Heaven, it stabs without changing its dress, it makes no effort to escape, it gladly delivers itself up; on trial it is composed as on the eve of triumph, it justifies its crime, it makes no defense, and longs for death, saying, in the words of Corday, "Tomorrow I hope to meet Brutus and the other patriots in Elysium."

It needs no argument to show to which class the prisoner belongs. He did, indeed, consort with others, but he lent his ear only, as one would say:

"What is that you would impart to me?
If it be aught toward the general good
Set honor in one eye and death in the other,
And I will look on both indifferently;
For, let the gods so speed me, as I love
The name of honor more than I fear death."

You have not shown that any gold has soiled his motive. You have shown that he gained from others plans, made with them agreements of time and place; but the motive, the spirit, the self-sacrifice, the courage, the justification, the longing for death is all his own. He alone says he thought it was his duty.

I say he is the fanatic, and not the hired tool; the soldier who derived his orders from conscience, and who, in the applause of that tribunal, smiles at all earthly trials. How else

do you explain his bearing? He smiles at all that you can do against him. To him the clanking of these chains is the sweet music of his triumph. The efforts of the prosecution and its bitter witnesses to convict him are but the confirmation of his glory. The power and majesty of the Government brought upon his head seem but clear and pleasant praises of his deed. He lives in that land of imagination where it seems to him legions of the souls of Southern soldiers wait to crown him as their chief commander. He sits here like a conqueror; for four weeks he has held his head erect when all others have quailed; he meets the stare of curiosity as a king might face his subjects; he keeps his state even in his cell, and the very keepers, in admiration, acknowledge him their master. Now, I know I dare not call him mad—the doctors have forbidden it. I might say that if ever man fell within that definition of Chief Justice Shaw of insanity, “A very common instance is where a person fully believes the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by command of a superior power, which supersedes all human laws and the laws of nature,” this is the man. But the doctors have said he is not insane, and though he fills the legal definition he does not fill the medical, and, therefore, I cannot hope that you will hold him insane.

But I appeal from medical definitions and from legal definitions to your good sense, and I ask you to explain for me the riddle of this man’s conduct in any other way than that he is a political fanatic; a monomaniac on the subject of his duty—call him sane or insane—yet one who is responsible only to that God from whom he derives his commandments. Before another tribunal, where all his previous life might be inquired into, and where time would be given for all this mystery to be unraveled, I do not hesitate to say I could convince the judges beyond a doubt that he is no more responsible for what he has done to the laws of the United States than a Chinaman whom custom and religion give the right to strangle his daughters. You have not the time, and I must

end the inquiry. But as you are sworn to try this man on your consciences, so I charge you to give him the benefit of his.

Gentlemen, when I look at the prisoner, and see (as it has been my duty for four weeks to see) the calm composure with which he has gone through the horrors of this trial; the cheerful and firm fortitude with which he has listened to the evidence against him, and with which he has endured the gaze of the public, as well as the ignominy of fetters; the frank and honest way in which he speaks of his crime, as a thing revolting in itself, but due to a cause which he thinks holy; and, more than all, the settled conviction, which robs the trial of all terrors, that he has but obeyed the voice of custom, education, and conscience; and the calm serenity with which he regards all pains that men can inflict upon him as contemptible, and part of his duty to endure, I cannot help being proud—though blood is on his hands—that such fortitude, unparalleled in history, is the growth of American soil; and I cannot help wishing that throughout all the coming vicissitudes of life, in all perplexities and doubts, on all occasions of right and wrong, in all misconstructions and trials, I may have so cheering, so brave, so earnest a conviction that I have done my duty.

And what is this duty? What is this doing right? Ask the Indian, as he returns to his wigwam, laden with the dripping scalps of the dispossessors of his soil, why he has done it, and he will answer you, with a flourish of his tomahawk and his face turned toward Heaven, that he is doing right—the Great Spirit has commanded it. Ask the Hindoo, as he disembowels some English officer by the Ganges, and riots in his blood, the reason of his crime, and he will tell you it is his duty, he is doing right—the Brahmins have decreed it. Consult the records of Vendee, and see why Charette and Gastou murdered the Republican soldiery in ambushes and thickets, and you will find they entered, at the bar of the Parisian Court, the plea that they were doing right; it was their duty. Now go through the devastated South; speak with a few of the five millions, and ask them why they have thirsted for and taken

Northern blood in secret places, murdered stragglers, waylaid orderlies, and killed by stealth, and they will answer you, pointing to the charred remains of some ancestral home and some neighboring hill dotted with graves: Because it was our duty; because we felt bound in conscience to do it.

Let us not undervalue the force of conscience. It is a man's sole director, his highest judge, his last resort. Without it he is but an erring wanderer, tossed by every wind of passion, interest and caprice. With it, his course is as certain and regular as the stars. In labor it cheers him; in pleasure it restrains him; to all manner of good it prompts him; from all manner of evil it defends him. In peace it teaches him to labor; in war to fight; for religion it tells him to fear God; for his country it says, protect and defend it; for himself it says, thy country, thy home, thy friends first, and thyself last. It is this spark of heavenly fire which has supported martyrs at the stake; which has sustained good men on the scaffold; which brought liberty and preserved it in this land for you and me and all of us. Let us, then, respect it, even when it speaks in a voice which we cannot understand. Let us honor it as the same voice which directs us, even when it directs others to a grievous fault. We are but men. The same God who created us all may reconcile all that, and find in our difference but ignorance on the one side and ignorance on the other. And if we dare to judge the dictates of conscience, do we not arrogate to ourselves the prerogatives of the Sovereign Lawgiver of the Universe, who gave the rule, "Judge not, that ye be not judged?" Therefore, considering that we have the limit set, and that we cannot go beyond without becoming in turn transgressors, let us leave that cause with Him who measures the conduct of men by no standard of success, but by obedience to the invariable dictates of conscience. For us it is enough that we are weak judges of weak men. If we were beasts, unconscious of the sacred limits of right and wrong, we might excuse him; if we were Gods and superior to destiny, we might destroy him; but as we are men who know our duties, but also our weakness, often seek good but do evil, therefore let us do the work of man to man—punish and reform him.

VII. Gentlemen, I have done with narrative and reflections. We now know that this Florida boy is not a fiend, but an object rather of compassion. We now know that slavery made him immoral, that war made him a murderer, and that necessity, revenge, and delusion made him an assassin. We now know that in all regards he is like us, only, that he was taught to believe right what we were taught to believe wrong; and that if we had been taught in his school, we would be like him, and if he had been taught in ours, he would be like us. We know that, from his point of view, he justifies the murder of our Secretary of State; we know that, from our standpoint, we would gladly have seen, for four years, the death of the rebel Secretary of State. We know that we were on the side of the Government, because we were born North; we know that he was against it, because he was born South; and that had we been born South we would have been in his place, and had he been born North he would be in ours. We know, also, that all the enemy desired the death of the President, and that he surpassed them only in courage; and that if we forgive them who killed our brothers, we must, in consistency, forgive him who tried to kill Mr. Seward, because he thought Mr. Seward guilty of murdering his brothers.

We know, further, that this man desires to die, in order to gain the full crown of martyrdom; and that, therefore, if we gratify him, he will triumph over us; but if we spare him, we will triumph over him. We know, also, that the public can gain nothing by his death from the example; for if he die as he lived, there will be more anxious to emulate his bravery, as Adam Luc, a deputy from Mentz, who, on the death of Corday, fired with admiration, wrote to the tribunal requesting to die like Charlotte Corday, while the multitude exclaimed: "She is greater than Brutus." But if he is suffered to live, he will receive the worst punishment—obscurity—and the public will have nothing to admire. We also know, and we cannot consider it too much, that he has killed no man, and that if he be put to death we shall have the anomaly of the victim surviving the murderer; and that, under the laws, this man can be punished only for assault and battery with

intent to kill, and, therefore, imprisoned. We know, also, that we are at the end of a civil war, a time when it is desirable there should be no farther mention or remembrance of fraternal strife. If we put this man to death, he will live forever in the hearts of his comrades, and his memory will forever keep our brethren from us. If, moreover, we put him to death, we will show that war is still in our hearts, and that we are only content to live with them because we have subdued them.

Finally, we know that if we let him live and teach him better, we show the whole world that this war was carried on to undeceive a deluded people and to maintain the supremacy of the laws, so that, now that the laws are supreme, we may begin with reform; but if we put him to death we show only that we are vindictive, and use our victory only to gratify our anger. Let him, then, live. His youth asks it, fraternity asks it, the laws ask it, our own sins ask it, the public good demands it. Because you and I taught him the code of assassination in slavery; because you and I brought about a civil war, which practiced him in assassination and made him justify it; because you and I spurned him from us when he sought refuge with us, and bade him destroy himself, ignobly by his own hand, or grandly, by assassination; because, in short, you and I have made this boy what he is, therefore, lest we who are really ourselves guilty of this attempt at murder, should perpetrate a real murder, let him live, if not for his sake, for our own. Take from the refugee his desperation, and you have the cavalryman; take from the cavalryman his hate, and you have the soldier of Hill; take from the soldier his martial habits, and you have the slaveholder; take from the slaveholder his slavery, and you have again the pure and simple child who, four years ago, went singing in innocence over the land.

Before I close, one word from myself. I have heretofore spoken of the prisoner as his counsel; I may also speak of him in my character as a man; and I can testify that in the four weeks' acquaintance I have had, hearing him converse with freedom and explain all his secret thoughts, in spite of

the odious crime with which he is charged, I have formed an estimate of him little short of admiration for his honesty of purpose, freedom from deception and malice, and courageous resolution to abide by the principles to which he was reared. I find in him none of that obstinacy which perseveres in crime because it is committed, and hopes to secure admiration in a feigned consistency. Neither is there about him a false desire of notoriety, nor a cowardly effort to screen himself from punishment; only one prominent anxiety, that is, lest people should think him a hired assassin, or a brute; an aversion to being made a public spectacle of, and a desire to be tried at the hands of his fellow citizens.

Altogether, I think we may safely apply to him, without spurious sympathy or exaggeration the words which were said of Brutus:

“This was the noblest Roman of them all;
All the conspirators, save only he
Did that they did, in envy of great Caesar,
He only in a general honest thought,
And common good to all, made one of them.
His life was gentle and the elements
So mixed in him that nature might stand up,
And say to all the world, This was a man.”

I commit him, then, without hesitation, to your charge. You have fought on the same fields, and as you have never been wanting in mercy to the defeated, so I know you will not be wanting in mercy to him. You have all commanded private soldiers, and as you could estimate the enthusiasm of your own men, so you will know how to estimate the enthusiasm of those who fought against you. The lives of all of you have shown that you were guided in all perplexities by the stern and infallible dictates of conscience and duty and I know that you will understand and weigh in your judgment of the prisoner, dictates and duties so kindred to your own.

THE TRIAL OF MRS. MARY E. SURRETT FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

The witness, on whose testimony Mrs. Surratt¹ was sent to the scaffold, was Louis J. Weichmann, who in 1859, while at a preparatory college in Maryland, had met her son, John H. Surratt. Both Weichmann and Surratt were intended for the priesthood and they became great friends. In 1862 Surratt left the school and a little later Weichmann went to Baltimore to enter the seminary there, but the war coming on, he was forced to take up teaching and obtained a position at St. Matthew's Institute in Washington. Surratt at this time was living on his mother's farm at Surrattsville, Md., thirteen miles from the city, and when he learned that his old friend Weichmann was in Washington, he promptly called on him at his school, was pleasantly received and the old college acquaintance was feelingly renewed. In the spring of 1863 Surratt invited Weichmann to his home, where he spent several days. In November, 1864, Mrs. Surratt rented her

¹ Mrs. Mary E. Surratt was forty-five years of age at the time of the trial. She was born in Prince George County, Md., and in 1835 was married to John H. Surratt, settling on a farm near Washington which Surratt had inherited from an uncle. Surratt afterwards became a railroad contractor and purchased the place which was later known as Surratt's, where he established a tavern and was appointed postmaster. They had three children—a daughter and two sons. One of the latter (Isaac) entered the Confederate army and the other (John) was the companion of Booth. Mrs. Surratt, becoming a widow, rented her farm to John M. Lloyd and removed to Washington in the fall of 1864, where she opened a boarding house at 604 H Street, N. W. Mrs. Surratt was deeply attached to the Catholic church, her family and the Southern Confederacy.

farm to John M. Lloyd and opened a boarding house in Washington, and Weichmann, who had given up teaching and was now a clerk in the War Department, became one of her boarders. He was treated like one of the family and for nearly six months was a witness to the meetings of the conspirators; the great crime was being staged under his very eyes, and yet entirely innocent of the intention of his friends and entirely ignorant of their object, he saw nothing until the blow fell.

On the trial he stated that on the morning of his first visit to the Surratt farm, he was awakened quite early by the sound of music under his window and saw a party of musicians who had come down to serenade some newly elected county officials. With them was a young man who was introduced by John H. Surratt as Mr. David E. Herold. In January, 1865, he was walking on the street with Surratt when he met two friends of Surratt who were introduced to him as Dr. Mudd and Mr. Booth. The latter invited the party to his room at the National Hotel. The invitation was accepted and on reaching his room Booth ordered wine and cigars for four. Dr. Mudd then went into the entry and called Booth out after him. They remained in there several minutes, then returned and called out Surratt. On returning to the room Dr. Mudd apologized to Mr. Weichmann, saying that Mr. Booth wished to purchase his farm, but was not willing to give enough for it. Booth also said something to the same effect. The three men seated themselves around a table and began a conversation during which Booth made lines with a pencil on a paper which looked like plans of roads. After this Booth was a frequent caller at Mrs. Surratt's house and had many interviews with both her and her son. One night in March a man called at Mrs. Surratt's, saying his name was Wood and that he wanted to see John and his mother. He stayed only one night, but came back three weeks later dressed very differently and this time he said his name was Payne and that he was a Baptist preacher. Going into his room one day Weichmann found Payne and John seated on the bed playing with bowie knives and revolvers, and a false mustache on the table which belonged to Payne.

Atzerodt also stopped at the house a few times, saying he wanted to see John, who happened then to be in the country; and Weichmann saw Payne and Atzerodt talking together.

A week before the assassination Mrs. Surratt asked Weichmann to go to Booth's room and ask him for the loan of his buggy to take her to Surrattsville. He went, but Booth told him he had sold it but gave him ten dollars to hire a conveyance for that purpose. When he returned with the hired buggy Mrs. Surratt told Weichmann she wanted to go to Surrattsville to arrange about a debt she owed there and asked him to drive her over. He consented. On the way they met John M. Lloyd, her tenant. She called to him and they had a whispered conversation.² Lloyd testified that she told him to get the shooting irons ready, that they would be wanted soon—referring to two carbines which five weeks before John Surratt on a visit to the Lloyd tavern with Herold and Atzerodt had left with him to keep until called for.³ On the morning of the assassination Mrs. Surratt told Weichmann that she must go into the country and see her creditor and asked him to have a conveyance for her. He hired a buggy and when he came to the house he saw that Booth was there talking to her in the parlor. She put a package on the bottom of the buggy. They again called at Lloyd's and again Mrs. Surratt told him to have the shooting irons ready that night as some parties would call for them, and gave him the package she had brought. It contained a field glass. She told him to have two bottles of whisky ready; that all the things would be called for that night. And she was not mistaken, for about midnight two men rode up to the Lloyd place. They were Booth and Herold, both of whom Lloyd knew. Herold said: "Lloyd, for God's sake, make haste and get those things," and Lloyd gave them the carbines and the field glass and a bottle of whisky which Herold took out to Booth, who drank some as he sat on his horse in the road.

At 11 o'clock on the night of April 17, United States officers

² Louis J. Weichmann, p. 220.

³ John M. Lloyd, p. 91.

went to the Surratt boarding house to arrest the inmates, as suspicion had by this time attached to this place as being the headquarters of the conspiracy. While they were in the house a knock was heard at the door and on being opened, Lewis Payne stepped in with a pickaxe over his shoulder, dressed in a grey coat and vest and black trousers. As he had left his hat in the house of Secretary Seward, he had made one out of the sleeve of a shirt or the leg of a drawers, pulling it over his head like a turban. He said he wished to see Mrs. Surratt, and when asked what he came at that time of night for, said he came to dig a gutter, as Mrs. Surratt had sent for him in the morning. Asked where he boarded, he said he had no boarding house, that he was a poor man, that he got his living with the pick. Asked why he came at that hour of the night to go to work, he said he simply called to find out at what time he should go to work in the morning. Asked if he had any previous acquaintance with Mrs. Surratt, he replied "No," but said that she knew he was working around the neighborhood and was a poor man. He gave his age as twenty; said he was from Fauquier County, Virginia, and showed an oath of allegiance and on it was "Lewis Payne, Fauquier County, Va." Mrs. Surratt was asked whether she knew him and she declared in the presence of Payne, holding up her hands: "Before God, I have never seen that man before; I have not hired him; I do not know anything about him."⁴

Mrs. Surratt's defenses were that she had always been loyal to the Government and that if the conspirators had used her house as a meeting place it was without her knowledge. Her counsel charged the principal witness, Weichmann, with perjury and claimed that John M. Lloyd was one of the conspirators who, to save his own neck, falsely testified against her. Her denial, she said, of any acquaintance with Payne was caused by her not recognizing him at the time, and several witnesses testified to her bad eyesight.

⁴ Major H. W. Smith, p. 230; R. C. Morgan, p. 231; Capt. W. M. Wermerskerch, p. 232.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,⁵ *President.*⁶

May 13.

The charges against Mrs. Surratt were that she was a member of the general conspiracy and that "in prosecution of said conspiracy, did . . . receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, the other prisoners and their confederates with the knowledge of the murderous and traitorous conspiracy aforesaid, and with intent to aid, abet and assist them in the execution thereof, and in escaping from justice, after the murder of the said Abraham Lincoln, as aforesaid."⁷

The prisoner, *Mary E. Surratt*, having previously pleaded *not guilty*,⁸ the taking of evidence began today.

Judge Advocate General *Holt*⁹ and Assistant Judge Advocates *Bingham*¹⁰ and *Burnett*,¹¹ for the Government.

Reverdy Johnson,¹² *Frederick A. Aikin*¹³ and *John W. Clappitt*,¹⁴ for the prisoner.

THE TESTIMONY FOR THE PROSECUTION.

John M. Lloyd, see page 91.

Louis J. Weichmann. Have been clerk in the office of General Hoffman, Commissary-General of prisoners, since January, 1864.

My acquaintance with John H. Surratt began in the fall of 1859, at St. Charles College, Mary-

land. We left college in 1862. On 1st of November, 1864, I went to board at the house of his mother, Mrs. Surratt, the prisoner, No. 541 H Street, and boarded there up to the time of the assassination.

On 2d of April, Mrs. Surratt

⁵ See p. 34.

⁶ For the other members of the Court, see *ante*, p. 33.

⁷ See *ante*, p. 40.

⁸ See *ante*, p. 44.

⁹ See *ante*, p. 35.

¹⁰ See *ante*, p. 35.

¹¹ See *ante*, p. 36.

¹² See *ante*, p. 42.

¹³ See *ante*, p. 41.

¹⁴ See *ante*, p. 41.

asked me to see J. Wilkes Booth, and say that she wished to see him on private business; Booth said he would come to the house in the evening, and he came.

On Tuesday previous to the assassination, was sent by Mrs. Surratt to the National Hotel to see Booth, for the purpose of getting his buggy. She wished me to drive her into the country on that day. Booth said he had sold his buggy, but he gave me \$10 to hire one, and I drove Mrs. Surratt to Surrattsville that day. Mrs. Surratt stated that she went there to see Mr. Nothe, who owed her money.

The day of the assassination went to Howard's stable, about half-past two; sent there by Mrs. Surratt for the purpose of hiring a buggy. She gave me a ten-dollar note, and I paid \$6 for the buggy; drove her to Surrattsville same day, arriving about 4. We stopped at Mr. Lloyd's, who keeps a tavern there. Mrs. Surratt went into the parlor; remained outside in the barroom until Mrs. Surratt sent for me. We left about half-past 6. Surrattsville is a two-hours' drive to the city, about ten miles from the Navy Yard bridge.

Before leaving the city, saw Mr. Booth in the parlor; Mrs. Surratt was speaking with him. They were alone; immediately after Mrs. Surratt and I started.

Saw prisoner, Atzerodt, at Howard's stable, when I went to hire the buggy that afternoon; he said he was going to hire a horse.

Went with John H. Surratt to Herndon House, about 19th March; rented a room. He inquired for Mrs. Mary Murray, who kept the house; and when

she came, Surratt said that he wished a private interview with her. He said, Perhaps Miss Anna Ward has spoken to you about this room. Did she not speak to you about engaging a room for a delicate gentleman, who was to have his meals sent up to his room? Mrs. Murray recollected, and Mr. Surratt said he would like to have the room, the following Monday, 27th of March, when the gentleman would take possession of it. No name was mentioned; afterward heard that the prisoner, Payne, was at the Herndon House. One day I met Atzerodt on the street, and asked him where he was going; said he was going to see Payne. I then asked, Is it Payne who is at the Herndon House? He said, Yes. That was after the visit Surratt had made to engage the room.

About 17th March last, a Mrs. Slater came to Mrs. Surratt's house, and stopped there one night. She went to Canada and Richmond. On 23d, John Surratt drove her and Mrs. Surratt into the country in a buggy, leaving about 8 in the morning. Mrs. Surratt told me on her return John had gone to Richmond with Mrs. Slater. Mrs. Slater was to have met a man by the name of Howell, a blockade-runner; but he was captured on 24th March, so Surratt took her back to Richmond. Mrs. Slater, I learned from Mrs. Surratt, was a blockade-runner or a bearer of dispatches.

Surratt returned from Richmond on 3d April, the day the news of the fall of Richmond was received; had some conversation with him about the fall of Richmond, and he seemed incredulous; told me he did not be-

lieve it; that he had seen Benjamin and Davis in Richmond, and they had told him that Richmond would not be evacuated.

Surratt remained in the house about an hour, when he told me he was going to Montreal, and asked me to walk down the street with him and take some oysters. He left that evening saying he was going to Montreal; have not seen him since.

Saw about nine or eleven \$20 gold pieces in his possession, and \$50 in greenbacks, when he came back from Richmond; just before leaving for Canada, he exchanged \$40 of gold for \$60 in greenbacks, with Mr. Holahan.

Afterward learned in Montreal that Surratt arrived there on 6th April, and left the 12th for the States; returned on the 18th, and engaged rooms at the St. Lawrence Hall, and left again that night, and was seen to leave the house of a Mr. Porterfield, in company with three others, in a wagon; arrived at Montreal on 19th; my knowledge was derived from the register of St. Lawrence Hall.

Saw a letter from John Surratt to his mother, dated St. Lawrence Hall, Montreal, April 12th, which was received here on the 14th; also saw another letter from him in Canada to Miss Ward, prior to the letter to his mother.

About 15th January, was passing down Seventh Street, in company with John H. Surratt, when he recognized an old acquaintance of his, Dr. Samuel A. Mudd, the gentleman there (pointing to the accused, Samuel A. Mudd). He and Booth were walking together. Surratt introduced Dr. Mudd to me, and Dr.

Mudd introduced Booth to both of us. Booth invited us to his room at the National Hotel; told us to be seated, and ordered cigars and wine for four. Dr. Mudd went out into a passage and called Booth out, and had a private conversation. Booth called Surratt, and all three went out together and had a private conversation, leaving me alone; did not hear the conversation; on returning to the room the last time Dr. Mudd apologized to me for his private conversation, and stated that Booth and he had some private business; that Booth wished to purchase his farm, but that he did not care about selling it, as Booth was not willing to give him enough. Booth also stated that he wished to purchase Dr. Mudd's farm. Afterward were seated round the center-table; Booth took out an envelope, and on the back of it made marks with a pencil; from the motion of the pencil it was like roads or lines.

After this Booth called at Mrs. Surratt's frequently, generally asking for Mr. John H. Surratt, and in his absence for Mrs. Surratt. Their interviews were always apart from other persons; have been in the parlor in company with Booth, when Booth has taken Surratt up stairs to engage in private conversation. Sometimes, when engaged in general conversation, Booth would say, John, can you go up stairs and spare me a word? They would then go up stairs and engage in private conversation two or three hours. The same thing would sometimes occur with Mrs. Surratt.

When I saw Booth at the National Hotel on Tuesday previous

to the assassination, to obtain his buggy for Mrs. Surratt, he spoke about the horses that he kept at Howard's stable, and I remarked, Why, I thought they were Surratt's horses. He said, No, they are mine.

John H. Surratt had stated to me that he had two horses, which he kept at Howard's stable.

Some time in March last, a man calling himself Wood came to Mrs. Surratt's and inquired for John H. Surratt; went to the door and told him Mr. Surratt was not at home; he expressed a desire to see Mrs. Surratt, and I introduced him, having first asked his name. That is the man (pointing to Lewis Payne). He stopped at the house all night; had supper served up to him in my room. He brought no baggage; he had a black overcoat on, a black dress-coat, and gray pants. He remained till the next morning, leaving by the earliest train for Baltimore. Three weeks afterward he called again. I again went to the door; had forgotten his name, and, asking him, he gave the name of Payne. Ushered him into the parlor, where were Mrs. Surratt, Miss Surratt, and Miss Honora Fitzpatrick. He remained three days. He represented himself as a Baptist preacher; said that he had been in prison in Baltimore; had taken the oath of allegiance, and was now going to be a good citizen.

Mrs. Surratt and her family are Catholics. John H. Surratt is a Catholic, and was a student of divinity at the same college as myself; heard no explanation given why a Baptist preacher should seek hospitality at Mrs. Surratt's; they only looked upon

it as odd, and laughed at it. Mrs. Surratt remarked that he was a great looking Baptist preacher; one of the young ladies called him Wood; he was dressed in a complete suit of gray; his baggage consisted of a linen coat and two linen shirts.

The only evidence of disguise or preparation for it, was a false moustache, which I found on the table in my room; put the moustache into a little toilet-box that was on my table. Payne afterward searched round the table and inquired for his moustache.

On returning from my office one day, while Payne was there, went up stairs to the third story and found Surratt and Payne seated on a bed, with bowie knives. There were also two revolvers and four sets of new spurs.

(A spur, a large bowie-knife, and a revolver, found in Atzerodt's room at the Kirkwood House, were exhibited to witness.)

That is one of the spurs.

Met David E. Herold, at Mrs. Surratt's, on one occasion; also when we visited the theater when Booth played Pescara; at Mrs. Surratt's, in the country, in the spring of 1863; again the summer of 1864, at Piscataway Church; do not know the prisoners, Arnold or O'Laughlin; recognize the prisoner Atzerodt. He first came to Mrs. Surratt's house about three weeks after I formed the acquaintance of Booth, and inquired for John H. Surratt, or Mrs. Surratt. Since then he must have been at the house ten or fifteen times. The young ladies of the house, not comprehending the name he gave, and understanding that he came

from Port Tobacco, in the lower portion of Maryland, gave him the nickname of Port Tobacco; never saw him in the house with Booth.

When Booth played the part of Pescara, in the Apostate, he gave Surratt two complimentary tickets, and as Surratt and I were going to the theater we met Atzerodt. He said he was going there too; at the theater we met David E. Herold, who smiled and nodded in recognition. We also met Mr. Holahan, who boarded at Mrs. Surratt's.

After the play was over all five left the theater together—Mr. Surratt, Holahan, and myself, in company. When Surratt, turning round, noticed that Atzerodt and Herold were not following, he desired me to go back after them; found Atzerodt and Herold in the restaurant adjoining the theater, talking very confidentially with Booth. On my approach they separated, and Booth said, Mr. Weichmann, will you not come and take a drink? which I did. We then left the restaurant, and joined the other two; went to Kloman's and had some oysters; after that we separated—Surratt, Holahan, and myself going home, and the others going down Seventh Street.

Cross-examined. When I went to board with Mrs. Surratt, in November, 1864, she rented her farm at Surrattsville to Mr. Lloyd, and removed to this city. Her house on H Street contains eight rooms—six large and two small. Mrs. Surratt rented her rooms and furnished board. Persons were in the habit of coming from the country and stopping at her house. Mrs. Surratt was always very hospitable, and had

a great many acquaintances, and they could remain as long as they chose. Her character was exemplary and lady-like in every particular; and her conduct, in a religious and moral sense, altogether exemplary. She was a member of the Catholic Church, and a regular attendant; generally accompanied her to church on Sunday. She went to her religious duties at least every two weeks, sometimes early in the morning and sometimes at late mass; was apparently doing all her duties to God and man up to the time of the assassination; visited Mrs. Surratt several times during '63 and '64, while she lived in the country; made her acquaintance through her son.

During the winter of 1864, John Surratt was frequently from home; do not know of his being in Canada in the winter of '64-5, although he could have gone without my knowledge; was upon very intimate terms with him; roomed together and shared the same bed.

He never intimated to me, nor to any one else to my knowledge, that there was a purpose to assassinate the President; stated to me, in the presence of his sister, shortly after he made the acquaintance of Booth, that he was going to Europe on a cotton speculation; that \$3,000 had been advanced to him by an elderly gentleman, whose name he did not mention.

At another time he said he was going on the stage with Booth; that he was going to be an actor, and they were going to play in Richmond.

His character at St. Charles College was excellent.

On Mrs. Surratt's visit to Sur-

ratsville, 11th April, she told me she had business with Mr. Nothe; that he owed her a sum of money, \$479, and the interest on it, for thirteen years. Mr. Nott said that Mr. Nothe was in the parlor. They went in and transacted their business; did not go in, and did not see Mr. Nothe.

Mrs. Surratt's second visit to Surratsville was on 14th April; told me she had received a letter from Mr. Charles Calvert in regard to that money that Mr. Nothe owed her, and that she was again compelled to go to Surratsville, and asked me to take her down. We took with us only two package of papers about her property at Surratsville; and another package done up in paper, about six inches in diameter; looked like two or three saucers wrapped up. Returned to Washington about 9. About ten minutes after we got back, some one rang the front door bell. It was answered by Mrs. Surratt; heard footsteps go into the parlor, immediately go out again, and down the steps.

First heard of the assault on President Lincoln 3 o'clock on Saturday morning, when the detectives came to the house and informed us.

The first time Payne came to Mrs. Surratt's, when he gave the name of Wood, he had on a black coat; and when he went into the parlor he acted very politely; asked Miss Surratt to play on the piano, and he raised the piano-cover, and did everything which indicated a person of breeding. The moustache I found upon my table was black, was sufficiently large to entirely change the appearance of the wearer; thought it rather queer

that a Baptist preacher should use a moustache; thought no honest person had any reason to wear one; took it and locked it up, because I did not care to have a false moustache lying round on my table.

Atzerodt stopped in the house only one night; he slept in the back room in the third story; John Surratt was out in the country; he returned that evening; and Atzerodt, who had been waiting to see John, left the next day; afterward heard Miss Anna and Mrs. Surratt say that they did not care about having him brought to the house. Miss Anna Surratt's expression was, she didn't care about having such sticks brought to the house; that they were not company for her.

On the evening of 14th, Mrs. Surratt showed me the letter she had received from John. He said he was much pleased with the city of Montreal, and with the French cathedral there; that he had bought a French pea-jacket, for which he had paid \$10 in silver; that board was too high at St. Lawrence Hall, \$2.50 a day in gold, and that he would probably go to some private boarding house, or that he would soon go to Toronto. The letter was signed John Harrison; his name is John Harrison Surratt.

To Mr. Ewing. Dr. Mudd introduced Booth to John H. Surratt and myself about 15th of January. It was immediately after the recess of Congress. The room that was occupied by Booth at the National Hotel had been previously occupied, so Booth said, by a member of Congress. Booth walked round the room, put his hand on the shelf, and took down some Congression-

al documents, and remarked, What a good read I shall have when I am left to myself.

When Booth and Dr. Mudd met Surratt and myself, on Seventh Street, Surratt first introduced Dr. Mudd to me, and then Dr. Mudd introduced Booth to both of us. Booth then invited us down to his room at the National Hotel. As we walked down Seventh Street, Mr. Surratt took Dr. Mudd's arm, and I walked with Booth. The conversation at the National lasted three-quarters of an hour. When Booth took the envelope out of his pocket, and with a pencil drew lines, as it were, on the back of this envelope, Mr. Surratt and Dr. Mudd were looking on. When Booth went out of the room with Dr. Mudd, they remained not more than five or eight minutes.

After their return to the room, we left the National Hotel and went to the Pennsylvania House, where Dr. Mudd had rooms. Dr. Mudd sat down by me; and we talked about the war. He expressed the opinion that the war would soon come to an end, and spoke like a Union man. Booth was speaking to Surratt. At about half-past 10, Booth bade us good night, and went out; Surratt and I then bade Dr. Mudd good night. He said he was going to leave next morning; had never seen Dr. Mudd before that day; had heard the name of Mudd mentioned in Mrs. Surratt's house, but whether it was this Dr. Samuel Mudd, cannot say.

To *Mr. Stone*. First saw Herold in the summer of 1863, at Surrattsville, at a serenade there. A band to serenade the officers

who had been elected, stopped at Mrs. Surratt's, serenaded us; on returning in the morning, they stopped and serenaded us again. Herold was with this party on this occasion that John Surratt introduced him to me.

To *Mr. Clappitt*. There was nothing in the conversation between Dr. Mudd, Booth and Surratt, at the National Hotel, that led me to believe there was anything like a conspiracy going on.

When Mrs. Surratt sent me to Booth, and he offered me the ten dollars, thought it nothing more than an act of friendship; never told Mrs. Surratt.

Mrs. Surratt would sometimes leave the parlor on being asked by Booth to spare him a word; would go into the passage and talk with him.

To *Mr. Doster*. Atzerodt has been frequently at Mrs. Surratt's house, and had interviews with John H. Surratt in the parlor; knew nothing of what took place between them. On the occasion of Payne's last visit to the house, Atzerodt came to see Surratt, and I saw Payne and Atzerodt together, talking in my room; do not know of any conversation that passed between Atzerodt and Booth, or Atzerodt and Payne, having reference to a conspiracy.

Surratt was continually speaking about cotton speculations, and going to Europe; heard Atzerodt once remark that he also was going to Europe, but he was going on horseback; concluded he was going South.

At half-past 2 on the afternoon of the 14th, saw Atzerodt at the livery stable, trying to get a horse. The stable keeper refused to let him have one. I asked Atzerodt where he was go-

ing; he said he was going to ride in the country, and he said he was going to get a horse and send for Payne; met Atzerodt one day on Seventh Street, and asked him where he was going; said he was going to see Payne; asked him if it was Payne who was at the Herndon House. He said, Yes. When Payne visited the Surratts, his business appeared to be with Mr. Surratt; did not notice any other disguise than the false moustache spoken of, nor any thing else to show

that Payne wanted to disguise himself. He appeared to be kindly treated by Mr. Surratt, as if he were an old acquaintance.

Do not know whether the Surratt family regarded him as a man in disguise or as a Baptist minister. One of the young ladies looked at him, and remarked that he was a queer-looking Baptist preacher, and that he would not convert many souls.

Recalled. Received this dispatch and delivered it to John H. Surratt on the same day.

New York, March 23, 1865.

To Weichmann, Esq., 541 H Street:

Tell John to telegraph number and street at once.

(Signed)

J. Booth.

(The original of the above dispatch offered in evidence.)

This is in Booth's handwriting; have seen Booth's handwriting, and recognize his autograph. When I delivered the message to John, asked him what particular number and street was meant, and he said, Don't be so damned inquisitive.

During Payne's second visit to Mrs. Surratt's house, after 4th March, I returned from my office one day at half-past 4; went to my room, and ringing the bell for Dan, the negro servant, told him to bring me some water, and inquired at the same time where John had gone. He told me Massa John had left the front of the house, with six others, on horseback, about half-past 2. On going down to dinner, found Mrs. Surratt in the passage weeping bitterly. She said, John is gone away; go down to dinner, and make the best of your dinner you can; about half-past 6 o'clock Surratt came in very much ex-

cited; rushed into the room. He had a revolver in his hand—one of Sharpe's revolvers, a four-barrelled revolver, a small one, you could carry it in your vest pocket. He appeared very much excited. He replied, I will shoot any one that comes into this room; my prospect is gone, my hopes are blighted; I want something to do; can you get me a clerkship? In about ten minutes Payne came into the room; also very much excited, and I noticed he had a pistol. About fifteen minutes after, Booth came into the room; Booth was so excited that he walked around the room three or four times very frantically, and did not notice me. He had a whip in his hand. I spoke to him, and, recognizing me, he said, I did not see you. The three men went up stairs into the back room, in the third story, and remained there about thirty minutes, when they left the house together. On Surratt's returning home, asked him where

he had left his friend Payne. He said, Payne had gone to Baltimore. I asked him where Booth had gone, he said Booth had gone to New York. Some two weeks after, Surratt, when passing the post-office, inquired for a letter that was sent to him under the name of James Sturdey; asked him why a letter was sent to him under a false name; he said he had particular reasons for it.

The letter was signed Wood, and the substance of it was, that the writer was at the Revere House in New York, and was looking for something to do; that he would probably go to some boarding house on West Grand Street, I think. This must have been before the 20th of March.

When I asked the negro to tell me who the seven men were that had gone out riding that afternoon, he said one was Massa John, and Booth, and Port Tobacco, and that man who was stopping at the house, whom I recognized as Payne. Though they were very much excited when they came into the room, they were very guarded indeed. Payne made no remark at all. Those excited remarks by Surratt were the only ones made.

To *Mr. Aiken*. Did not hear the conversation that took place between Mrs. Surratt and Mr. Lloyd at Uniontown.

I have seen Mrs. Slater at Mrs. Surratt's house only once. Mrs. Surratt told me that she came to the house with Mr. Howell; that she was a North Carolinian; that she spoke French, and that she was a blockade-runner or bearer of dispatches. Mrs. Surratt said if she got into trouble there was no danger, because she could im-

mediately apply to the French Consul, speaking French as she did; she drove up to the door in a buggy; there was a young man with her. Mrs. Surratt told me to go out and take her trunk. She wore a crape mask veil. That was in the month of February. When Howell was at Mrs. Surratt's, he gave the name of Spencer; afterward learned from John Surratt that his name was Augustus Howell. He was well acquainted with Mrs. Surratt; was introduced to him and had some conversation with him; told him I would like to be South for the purpose of continuing my theological studies.

To *Mr. Clappitt*. Spoke about Mr. Howell to Captain Gleason, a clerk in our office, and said to him, There is a blockade-runner at Mrs. Surratt's; shall I have him delivered up? I agitated the question with myself for three days, and decided in favor of Surratt; thought it would be perhaps the only time the man would be there, and that I would let him go, in God's name.

To *Mr. Aiken*. While I was a clerk in the War Department, Howell taught me a cipher alphabet, and how to use it. The only use I ever made of it was to write out a poem of Longfellow's in it. The cipher alphabet was in my box, and was found among my things when they were seized.

Read in the paper, the morning after the assassination, the description of the assassin of Secretary Seward; he was described as a man who wore a long gray coat. I went to the stable on G Street and told Brook Stabler that I thought it was Atzerodt; afterward met Mr. Holahan, and

he also communicated similar suspicions to me, and after breakfast we gave ourselves up to Superintendent Richards, of the Metropolitan Police force; told Officer McDevitt about Payne, and where he was stopping, and what I knew of Surratt, Atzerodt and Herold. No threats were made, and no offers or inducements if I did. My only object was to assist the Government. I surrendered myself because I thought it was my duty. It was hard for me to do so, situated as I was with Mrs. Surratt and her family, but it was my duty, and so I have always regarded it since.

Cannot say that any objection was ever made by any of the prisoners at the bar to my being present at any of their conversations, but they would withdraw themselves. When Booth would call, he would converse perhaps five or ten minutes, and then I noticed that John would tap or nudge Booth, or Booth would nudge Surratt; then they would go out of the parlor and stay up stairs for two or three hours. Their conversations, in my presence, were on general topics; never learned anything from the conversations of any of the prisoners at the bar of any intended treason or conspiracy; would have been the last man in the world to suspect John Surratt, my schoolmate, of the murder of the President of the United States. My suspicions were aroused by Payne and Booth coming to the house, and their frequent private conversations with John Surratt, and by seeing Payne and Surratt playing on the bed with bowie knives, and again by finding a false mous-

tache in my room; but my suspicions were not of a fixed or definite character; made a confidant of Captain Gleason in the War Department; told him that Booth was a secesh sympathizer, and mentioned snatches of conversation I had heard from these parties; and I asked him, Captain, what do you think of all this? Asked him whether they could be bearers of dispatches or blockade-runners; remember seeing in the New York Tribune, of March 19th, the capture of President Lincoln fully discussed, and I remarked to Captain Gleason, Captain, do you think any party could attempt the capture of President Lincoln? He laughed and hooted at the idea. This happened before the horseback ride of Surratt and the six others. Remarked to the Captain, the morning after they rode, that Surratt had come back, and I mentioned to Gleason the very expressions Surratt had used, and told him that, to all appearances, what they had been after had been a failure, and that I was glad, as I thought Surratt would be brought to a sense of his duty.

Had been a companion of John H. Surratt's for seven years; did not consider that I forfeited my friendship to him in mentioning my suspicions to Mr. Gleason; he forfeited his friendship to me by placing me in the position in which I now stand, testifying against him; think I was more of a friend to him than he was to me. He knew that I permitted a blockade-runner at the house, without informing upon him, because I was his friend. But I hesitated about it for three days; when my suspicions of danger to

the Government were aroused, preferred the Government to John Surratt.

To *Mr. Ewing*. Surratt once made the remark to me that if he succeeded in his cotton speculation, his country would love him forever, and that his name would go down green to posterity.

To the *Judge Advocate*.

(Lewis Payne was here attired in the coat and vest in which he was arrested at the house of Mrs. Surratt.)

Payne wore that coat and vest the last time he came to Mrs. Surratt's, 14-16 March, and it was on the 16th day that the party took that horseback ride; am enabled to fix the date of Payne's last visit to the house, from the fact that he went with John Surratt, Miss Fitzpatrick, and Miss Dean to see Jane Shore played at the theater. Forrest was playing there at that time, and Surratt had got a ten-dollar ticket.

A. R. Reeves. Reside in Brooklyn, N. Y.; am a telegraph operator. I identify the dispatch to Weichmann.

It was sent on the 23d; remember Booth's signing J. Booth, instead of John Wilkes Booth, knowing that to be his name; noticed at the time that Wilkes was left out.

(A photograph of Booth was exhibited to witness.)

This is the gentleman who handed the dispatch to me.

Miss Honora Fitzpatrick. Resided at the house of Mrs. Surratt, the prisoner at the bar, last winter. During March saw John Wilkes Booth and John H. Surratt there, and of the prisoners, Mr. Wood (pointing to the prisoner, Payne); do not know him

by any other name, and Mr. Atzerodt (pointing to the accused, Atzerodt); never saw Herold there.

Some time in March, in company with Mr. Surratt, Wood (Payne) and Miss Dean, I went to Ford's theater. John Wilkes Booth came into the box while we were there.

Mrs. Emma Offutt. On Tuesday, the 11th of April, I was in the carriage with Mr. Lloyd, my brother-in-law; somewhere about Uniontown we met Mrs. Surratt; Mr. Lloyd got out. Whether Mrs. Surratt called him, do not know; did not hear their conversation, for I was some distance off.

On Friday, 14th, saw Mrs. Surratt at Mr. Lloyd's house; saw her and Mr. Lloyd conversing together in the back yard; paid no attention to them; could not tell a word that passed between them.

Major H. W. Smith. Was in charge of the party that took possession of Mrs. Surratt's house on the night of the 17th of April, and arrested Mrs. Surratt, Miss Surratt, Miss Fitzpatrick and Miss Jenkins. When I rang the bell Mrs. Surratt came to the window, and said, Is that you Mr. Kirby? The reply was that it was not, and to open the door. She opened the door, and I asked, Are you Mrs. Surratt? She said, I am the widow of John H. Surratt. And I added, The mother of John H. Surratt, Jr.? She replied, I am. I then said, I come to arrest you and all in your house, and take you for examination to General Augur's headquarters. No inquiry was made as the cause of the arrest. While we were there, Payne

came to the house; questioned him in regard to his occupation and what business he had at the house that time of night. He stated that he was a laborer, and had come there to dig a gutter at the request of Mrs. Surratt; went to the parlor door, and said, Mrs. Surratt, will you step here a minute? She came out and I asked her, Do you know this man, and did you hire him to come and dig a gutter for you? She answered, raising her right hand, Before God, sir, I do not know this man, and have never seen him, and I did not hire him to dig a gutter for me. Payne said nothing; then placed him under arrest. Payne was standing in full view of Mrs. Surratt, and within three paces of her, when she denied knowing him.

Cross-examined. A variety of photographs were found in a photograph album and in various parts of Mrs. Surratt's house.

Payne was dressed that night in a gray coat, black pantaloons, and rather a fine pair of boots. He had on his head a gray shirt-sleeve, hanging over at the side. His pantaloons were rolled up over the tops of his boots; on one leg only, I believe.

Have known some loyal people who have had in their possession photographs of the leaders of the rebellion. I cannot say that I have seen on exhibition at book-stores, or advertised by newspaper dealers and keepers of photographs, cartes-de-visite of the leaders of the rebellion; have seen photographs of Booth, but only since this trial.

To *Mr. Aiken*. Think, if I saw a gentleman dressed in black, with a white neck-cloth, repre-

senting himself as a Baptist preacher, and two months afterward I met the same person, with a shirtsleeve on his head, an old gray coat, his pantaloons stuffed into his boots, with a pickaxe on his shoulder, presenting himself as a laborer, and in the night-time, I think that, were I very familiar with his countenance, I should recognize him as the same person.

R. C. Morgan. On the night of the 17th, Colonel Olcott gave me instructions to go to the house of Mrs. Surratt, and superintend the seizing of papers, and the arrest of the inmates of the house; arrived there about half-past 11 o'clock, and found Major Smith, Captain Wermer-skirch, and some other officers, who had been there about ten minutes. The inmates were in the parlor, about ready to leave.

Had sent out for a carriage to take the women arrested in the house to headquarters, when I heard a knock and a ring at the door. At the same time Captain Wermerskirch and myself stepped forward and opened the door, when the prisoner, Payne, came in with a pickaxe over his shoulder, dressed in a gray coat, gray vest, black pants, and a hat made out of, I should judge, the sleeve of a shirt or the leg of a drawer. I immediately shut the door. Said he, I guess I am mistaken. Said I, Whom do you want to see? Mrs. Surratt, said he. You are right; walk in. He took a seat, and I asked him what he came there at this time of the night for. He said he came to dig a gutter; Mrs. Surratt had sent for him; asked him when. He said, In the morning; asked him where he last worked.

He said, Sometimes on I Street; asked him where he boarded. He said he had no boarding house; he was a poor man, who got his living with the pick; put my hand on the pickaxe while talking to him. Said I, How much do you make a day? Sometimes nothing at all; sometimes a dollar; sometimes a dollar and a half. Said I, Have you any money? Not a cent, he replied; asked him why he came at this time of night to go to work. He said he called to find out what time he should go to work in the morning; asked him if he had any previous acquaintance with Mrs. Surratt. He said, No; asked him why she selected him. He said she knew he was working around the neighborhood, and was a poor man, and came to him; asked him how old he was. He said, About twenty; asked him where he was from. He said he was from Fauquier County, Virginia; he pulled out an oath of allegiance, and on the oath of allegiance was, Lewis Payne, Fauquier County, Virginia; asked him if he was from the South. He said he was; asked him when he left there. Some time ago; in the month of February, he said; asked him what he left for; said he would have to go in the army, and he preferred earning his living by the pickaxe; asked him if he could read. He said, No. I asked him if he could write. He said he could manage to write his name.

Told him he would have to go up to the Provost Marshal's office to explain. He did not answer. The carriage had returned then that had taken off

the women, and I ordered him taken up to the Provost Marshal's office.

When Payne knocked at the door, Mrs. Surratt and the inmates of the house were all in the parlor, prepared to leave.

The next morning I went down to the house and found cartes-de-visite of Jefferson Davis, Beauregard and Alexander H. Stephens; Lieutenant Dempsey, the officer in charge, showed me a photograph of J. Wilkes Booth, that he had found behind a picture, which he turned over to the Provost Marshal.

(An envelope containing two photographs of General Beauregard, one of Jefferson Davis, one of Alexander H. Stephens, and a card with the arms of the State of Virginia and two Confederate flags emblazoned thereon, with the inscription

"Thus will it ever be with tyrants, Virginia the Mighty,
Sic Semper Tyrannis.")

Found all these at the house of Mrs. Surratt.

Cross-examined. Do not recollect having seen photographs of J. Wilkes Booth at bookstores before the assassination of the President; never had photographs of Jefferson Davis and other prominent leaders of the rebellion in my hand, until I had these, found at Mrs. Surratt's; have not seen people with photographs of these men since the rebellion, though they might have had them before.

Captain W. M. Wermerskirch. On the night of 17th April was at the house of Mrs. Surratt, when the prisoner, Payne, came in, about midnight. Major Smith asked Mrs. Surratt

whether she knew him, and Mrs. Surratt, in the presence of Payne, held up one or both hands, and said, Before God, I have never seen that man before. I have not hired him; I do not know anything about him; or words to that effect. The prisoner at the bar (pointing to Lewis Payne) is the man of whom I speak, and Mrs. Surratt (pointing to the prisoner, Mary E. Surratt) is the woman of whom I speak.

Cross-examined. Made a search of Mrs. Surratt's house, and found a number of photographs, papers, a bullet-mold, and some percussion caps. The bullet-mold and percussion caps were found in the back room of the lower floor, which was Mrs. Surratt's room.

I found cartes-de-visite, lithographic ones I think, but got up in the same shape as photographic cartes-de-visite, of Jefferson Davis, Alexander H. Stephens and Beauregard. Also saw a photograph of General McClellan there.

THE WITNESSES FOR THE DEFENSE.

George Cottingham. Am special officer on Major O'Beirne's force, and was engaged in making arrests after the assassination. After the arrest of John M. Lloyd, he was placed in my charge at Roby's Post Office, Surrattsville. For two days Mr. Lloyd denied knowing anything about the assassination. Told him that I was perfectly satisfied he knew about it, and had a heavy load on his mind, and that the sooner he got rid of it the better. He then said to me, O, my God, if I was to make a confession, they would murder me!

When Major Smith informed Mrs. Surratt that the carriage was ready to take her to the Provost Marshal's office, she requested a minute or so to kneel down and pray. She knelt down; whether she prayed or not I cannot tell. Payne was dressed in a dark coat; pants that seemed to be black, and seemingly a shirt sleeve, or the lower part of a pair of drawers, on his head, that made a very closely-fitting head-dress, hanging down about six or seven inches. He was full of mud, up to his knees, nearly. He had taken no particular pains to disguise himself; his face looked just the same as it does now, and the only difference was in the clothes.

Lieutenant John W. Dempsey. (Exhibiting to witness picture Morn, Noon, and Night.) I found this in the back room of the first floor of Mrs. Surratt's house. The back part was all sealed.

I opened the back and found the likeness of J. Wilkes Booth, with the word Booth written in pencil on the back of it.

Asked, Who would murder you? He replied, These parties that are in this conspiracy. Well, said I, if you are afraid of being murdered, and let these fellows get out of it, that is your business, not mine. He seemed to be very much excited.

Lloyd said that Mrs. Surratt had come down to his place on Friday between 4 and 5 o'clock; that she told him to have the fire-arms ready; that two men would call for them at 12 o'clock, and that two men did call; that Herold dismounted from his horse, went into Lloyd's tavern, and

told him to go up and get those fire-arms. The fire-arms, he stated, were brought down; Herold took one, and Booth's carbine was carried out to him; but Booth said he could not carry his, it was as much as he could do to carry himself, as his leg was broken. Then Booth told Lloyd, I have murdered the President; and Herold said, I have fixed off Seward. He told me this when he came from Bryantown, on his way to Washington, with a squad of cavalry; I was in the house when he came in. He commenced crying and hallooing out, O, Mrs. Surratt, that vile woman, she has ruined me! I am to be shot! I am to be shot!

Asked Lloyd where Booth's carbine was; he told me it was up stairs in a little room, where Mrs. Surratt kept some bags; went up and hunted about, but could not find it. It was at last found behind the plastering of the wall. The carbine was in a bag, and had been suspended by a string tied round the muzzle of the carbine; the string had broken, and the carbine had fallen down. We did not find it where Lloyd told me it was. When Lloyd made these statements to me no one was present but Mr. Jenkins, a brother of Mrs. Surratt's. Lloyd said that Mrs. Surratt spoke about the fire-arms between 4 and 5 o'clock on the day of the assassination.

At the last interview I had with him, when he came to the house to go to Washington, he cried bitterly, and threw his hands over his wife's neck, and hallooed for his prayer book. Lloyd's wife and Mrs. Offutt were in the room, and heard all the conversation.

I met Mr. Aiken at the Metropolitan Hotel on Saturday evening last, I think. He asked me to take a drink. I went up and drank with him. He then said, I am going to have you as a witness in this case. He asked me to sit down on a sofa and have some conversation. I said no; it would not look well for me to be sitting there, I would go outside and take a walk. When we went outside, the first question Mr. Aiken put to me was, whether I was a Catholic. I said I was not. We walked along, and he said, Lloyd has made a confession to you. Said I. Yes. He then said, Will you not state that confession to me? I declined to do it, but told him he might ask any questions, and I would answer them. He put the question to me, if Lloyd had stated that Mrs. Surratt had come down there and told him to have the fire-arms ready. I said not. I had an object in that answer. I am now on my oath, and when on my oath I speak the truth, and I can have witnesses to prove what I say—six cavalrymen, Mr. Lloyd's wife, and Mrs. Offutt. He wanted to pick facts out of me in the case, but that is not my business; I am an officer, and I did not want to let him know anything either way; wanted to come here to the Court and state everything that I knew. I told him distinctly that I would not give him that confession; that I had no right to do so.

Mr. Aiken. Did I ask you if Mr. Lloyd, in his confession, said anything at all in reference to Mrs. Surratt? You asked me first whether Lloyd had made a confession to me, and I said, Yes. Said you, What is that

confession? I should like to know it. My answer to you was, I decline giving you that confession; but if you will ask a question, I will answer you. That question you put to me, and I answered: I said No.

Then what did you tell me this afternoon with reference to it? I told you the same thing over again in the witness room, when you asked me, before I came up on the stand. It is a part of my business (I am a detective officer) to gain my object. I obtained the confession from Lloyd through strategy.

Then you gave me to understand, and you are ready now to swear to it, that you told me a lie? Undoubtedly I told you a lie there; for I thought you had no business to ask me. I told you you might call me into court, and I state here that I did lie to you; but when put on my oath I will tell the truth.

Mrs. Emma Offutt (recalled). On the evening of 14th April, Mr. Lloyd was very much in liquor, more so than I have ever seen him in my life; insisted on his lying down, and I had to help him take off his coat. In a few minutes he got up and said he was too sick, and would go into the dining room; but he went into the barroom after that. For the last four or five months, have noticed his drinking freely.

Did not hear his full confession to Captain Cottingham; did not hear him say, referring to Mrs. Surratt, That vile woman, she has ruined me.

Since January last, have met Mrs. Surratt several times; never heard from her a word concerning any plot or conspiracy, and never heard any disloyal ex-

pressions from her; know that Mrs. Surratt's sight is defective.

B. F. Gwynn. Reside near Surrattsville. I have been acquainted with Mrs. Surratt seven or eight years. Friday, the day of the murder of the President, was passing in my buggy, some one hailed me, and said Mrs. Surratt wanted to see me in the tavern. She gave me a letter from Mr. Nothey, and asked me to read it to him, which I did; have transacted some business for her relative to the sale of lands her husband had sold to Mr. Nothey; have personal knowledge of Mr. Nothey buying land from Mrs. Surratt's late husband.

About half-past 4 that day, I parted with Mr. Lloyd on the road from Marlboro, about five miles from Surrattsville, and did not see him afterward. He had been drinking right smartly.

John Nothey. Reside about fifteen miles from Washington, in Prince George's County. Some years ago I purchased seventy-five acres of land from Mrs. John Surratt, sen. Mrs. Surratt sent me word that she wanted me to come to Surrattsville to settle for this piece of land; owed her a part of the money on it; met her there on Tuesday in regard to it. On Friday, 14th, Mr. Gwynn brought me a letter from Mrs. Surratt, but I did not see her that day.

Joseph T. Nott. For two or three months have been tending bar at Lloyd's tavern at Surrattsville.

On 14th April saw Mr. Lloyd in the morning, and again at sundown. He had been to Marlboro on that day; when he returned, he brought some fish and oysters, which he carried round

to the kitchen in the back yard. For some weeks past Mr. Lloyd had been drinking a good deal; nearly every day, and night, too, he was pretty tight. At times he had the appearance of an insane man from drink; saw him at the buggy in which Mrs. Surratt was, assisting in fixing it. He was pretty tight that evening.

Cross-examined. Have never done or said anything against the Government, or the Union party in Maryland, during this struggle; have never taken sides with the secession element there, nor said anything against the officers of the Government of the Executive. Do not think I rejoiced at the success of the rebels at the first battle of Bull Run; belong to the Catholic Church when I belong to any Church at all.

Andrew Kallenbach. Was present in the room of Mr. Lloyd's house when he came from Bryantown, at the time of his arrest; did not hear Lloyd say to Captain Cottingham, Mrs. Surratt, that vile woman, she has ruined me.

Cross-examined. Lloyd told Cottingham that he was innocently persuaded into this matter by Mrs. Surratt, or Mrs. Surratt's family; Lloyd told Cottingham that the carbine was hid up stairs and after Lloyd was gone Mr. Cottingham went up for it.

J. Z. Jenkins. Was at Mr. Lloyd's on the 14th, when Louis J. Weichmann and Mrs. Surratt drove up to the house. Mrs. Surratt showed me a letter from George Calvert, also two judgments that Mr. Calvert obtained in the Circuit Court of our county against Mr. Surratt, senior. She said this letter brought her there, and made out the interest

on those judgments for her. She expressed no wish to see John M. Lloyd; she was ready to start some time before he came, and was on the point of going when Lloyd drove up. Lloyd was very much intoxicated at the time.

My intercourse with Mrs. Surratt has been of an intimate character. She has never, to my knowledge, breathed a word that was disloyal toward the Government; nor have I ever heard her make any remark showing her to have knowledge of any plan or conspiracy to capture or assassinate the President or any member of the Government; have known her frequently to give milk, tea and such refreshments as she had in her house, to Union troops when they were passing. Sometimes she received pay, for it; at other times she did not. Know that Mrs. Surratt's eyesight is defective. Never heard her express any disloyal sentiments.

Cross-examined. Mrs. Surratt is my sister. During the war my attitude toward the Government has been perfectly loyal. I have spent \$3,000 in my district to hold it in the Union, and during the struggle have taken no part against the Government. I have been entirely on the side of the Government during the whole war, and never, by act or word, have I aided or abetted the rebellion, and never has the scrawl of a pen gone from me across to them, nor from them to me; have never fed any of their soldiers, nor induced any soldiers to go into their army, nor aided and assisted them in any way.

Richard Sweeney. Met John M. Lloyd at Marlboro on the 14th April, and rode back with him part of the way toward his home.

He was considerably under the influence of liquor, and he drank on the road.

Am acquainted with J. Z. Jenkins, the brother of Mrs. Surratt. I have known him for ten years, and can speak confidently of his reputation as a loyal man. At the outset of these difficulties he was a zealous Union man. A Union flag was erected within one hundred yards of where I boarded, and there was a rumor that it was to be cut down, and Jenkins was one of the men who took a gun and remained there all night for the purpose of guarding the flag.

Cross-examined. Have been entirely loyal during the rebellion; have never done anything inimical to the interests of the Government, that I know of; have never desired the success of the rebellion; cannot say but what my feelings were neutral in the matter; was perfectly indifferent whether the Government succeeded or failed.

James Lusby. The day that Mr. Lincoln was killed, Mr. Lloyd and I returned from Marlboro to Surrattsville together. He was very drunk; drove to the bar-room door, and he went round to the front door; saw Mrs. Surratt just as she was about to start to go home.

Cross-examined. When I got out of my wagon, went into the barroom to get a drink, and do not know what took place in the meantime, when Lloyd went round the house; am quite sure Lloyd was drunk; had been quite smart in liquor in the course of the day before I met Lloyd, and then took some drinks with Lloyd but do not think I was as tight as he.

J. V. Piles. Am personally acquainted with J. Z. Jenkins; have known him ever since I was a little boy; regarded him, formerly, as one of the most loyal men in that part of the country. I thought that he and I were two of the most loyal men there, at the beginning of the rebellion; never heard a disloyal sentiment from Mr. Jenkins, nor do I know of any overt act on his part that might be construed into disloyalty; have not been in his company of late.

Cross-examined. Since his negroes have been taken away from him, rumor says he is not quite so good a Union man as he was in the beginning.

J. C. Thompson. Have known J. Z. Jenkins since 1861, and have always considered him a loyal man.

Cross-examined. Do not know that I am a competent judge of loyalty; have always considered myself loyal, and I think that such has been my reputation; have never desired the success of the Southern rebellion, and have been all the time on the side of the Government.

Dr. J. H. Blandford. Am acquainted with J. Z. Jenkins, and have regarded him as loyal to the Government of the United States; never heard him express any disloyal sentiments.

Wm. P. Wood. Am Superintendent of the Old Capitol Prison; believe Mr. Jenkins to be a loyal man; never heard him utter any sentiments against the Government of the United States, but he is very bitter on the administration on account of the negroes. Outside of this, I believe him to be a truly loyal man; people down there, who, in the

early part of the war, acted with the administration, are now dissatisfied with it on account of its action on the subject of slavery, and there is scarcely a single friend of the administration in that county now.

Never heard him express any desire for the success of the South. Mr. Jenkins is now under arrest at the Old Capitol Prison; do not know what for.

Miss Anna E. Surratt. Was arrested on the 17th of April, and have since been confined at Carroll Prison.

Have met Atzerodt, the prisoner at the bar, at our house in Washington City; do not think he remained over night but once. He called very often, and asked for that man Weichmann. He was given to understand that he was not wanted at the house; ma said she did not care about having strangers there. The last time Atzerodt was there, Weichmann engaged the room for him, and asked ma to allow him to stay there all night. They were sitting in the parlor, and made several signs over to each other. Weichmann and he then left the room, and presently Weichmann came back and asked ma if she would have any objections to Atzerodt remaining there that night, that he did not feel at home at an hotel. Ma said, Well, Mr. Weichmann was a boarder at my mother's house, and was but too kindly treated there. It was my mother's habit to sit up for him at night, when he was out of the house; she would sit up and wait for him the same as for my brother.

Payne first came to our house one night after dark, and left very early the next morning.

That was not long after Christmas. Some weeks afterward, he came one night when we were all in the parlor. Weichmann went to the door and brought the gentleman in, and I recognized him as the one who had been there before under the name of Wood; did not know him by the name of Payne at all. Ma said she did not understand why strange persons should call there, but supposed their object was to see my brother, and she would treat them politely, as she was always in the habit of treating everyone. He called two or three times after that.

Have met John Wilkes Booth at our house. The last time on Friday, 14th; did not see him; heard he had been there.

My mother went to Surrattsville on the Friday of the assassination; her carriage was at the door at the time Mr. Booth called; said she was obliged to go on some business in regard to some land. Mr. Booth only stayed a very few minutes. He never stayed long when he came.

(A picture called "Morning, Noon and Night," exhibited to witness.)

That picture belonged to me; it was given to me by that man Weichmann, and I put a photograph of John Wilkes Booth behind it; went with Miss Honora Fitzpatrick to a daguerrean gallery one day to get her picture; saw some photographs of Mr. Booth there; we bought two and took them home. When my brother saw them, he told me to tear them up and throw them in the fire, and that, if I did not, he would take them from me. So I hid them; owned photographs of Davis, Stephens, Beauregard,

Stonewall Jackson, and a few other leaders of the rebellion. My father gave them to me before his death, and I prize them on his account, if on nobody else's; also had in the house photographs of Union Generals—of General McClellan, General Grant, and General Joe Hooker.

Last time I saw my brother was on Monday, 3d of April; have never seen him since. He may have been on friendly terms with J. Wilkes Booth. Mr. Booth called to see him sometimes; never asked him what his friendship was to Booth. One day, when we were sitting in the parlor, Booth came up the steps, and my brother said he believed that man was crazy, and he wished he would attend to his own business and let him stay at home. He told me not to leave the parlor, but I did.

My brother was at St. Charles' College, Maryland, in 1861; but he was not a student of divinity. He was there, I think, three scholastic years, and spent his vacations in August at home.

Never, on any occasion, heard a word breathed at my mother's house of any plot or conspiracy to assassinate the President of the United States; nor have I ever heard any remarks in reference to the assassination of any member of the Government; nor did I ever hear discussed, by any member of the family, at any time or place, any plan or conspiracy to capture the President of the United States.

My mother's eyesight is very bad, and she has often failed to recognize her friends. She has not been able to read or sew by gaslight for some time past.

Never saw Dr. Samuel Mudd

in my mother's house in Washington.

(Submitting to witness the card containing the arms of the State of Virginia, with the motto, "Sic semper tyrannis.")

Recognize that card; it belongs to me, and was given me by a lady about two and a half years ago; have never seen Judson Jarboe at our house; he never visited the house at all.

Miss Honora Fitzpatrick (recalled). Boarded at Mrs. Surratt's 6th October till I was arrested; met the prisoner Payne at breakfast in March or April last; have seen him there twice; know the prisoner Atzerodt; have seen him at Mrs. Surratt's. He only stayed there a short time; think Mrs. Surratt sent him away. I occupied the same room as Mrs. Surratt, and Miss Surratt slept in the same room for a time. I bought a photograph of J. Wilkes Booth, and took it to Mrs. Surratt's house; Miss Anna Surratt also bought one. The last time I saw Mr. Booth at Mrs. Surratt's was on the Monday before the assassination. John Surratt had left a fortnight before; never saw him after; am acquainted with Louis J. Weichmann; he was treated in Mrs. Surratt's house more like a son than a friend.

Mrs. Surratt has complained that she could not read or sew at night on account of her sight; have known of her passing her friend, Mrs. Kirby, on the same side of the street, and not see her at all. The photographs of Stephens, Beauregard and Davis did not belong to me. Was at communion with Mrs. Surratt on Thursday morning, 13th April; was present at the time of

Payne's arrest at Mrs. Surratt's house; did not recognize him at the house, but I did at General Augur's office, when the skull-cap was taken off his head; never saw Judson Jarboe until I got acquainted with him at Carroll Prison; never saw Dr. Samuel Mudd at Mrs. Surratt's house; never heard his name mentioned there.

Cross-examined. When we were at General Augur's headquarters, Mrs. Surratt was taken in another room; some one suggested that this man Payne was her brother, John H. Surratt; do not remember that Mrs. or Miss Surratt said there that they had never seen that man before. Miss Surratt remarked that that ugly man was not her brother, and she thought whoever called him so was no gentleman.

Mrs. Eliza Holahan. Boarded with Mrs. Surratt from the 7th of February until two days after the assassination; know the prisoner at the bar who called himself Wood (Payne); saw him at Mrs. Surratt's in February, and the second time, about the middle of March. He was introduced to me as Mr. Wood; never exchanged a word with him on either visit; asked Miss Anna Surratt who he was, and she said he was a Mr. Wood, a Baptist minister. I said I did not think he would convert many souls; he did not look as if he would; have seen Atzerodt at Mrs. Surratt's; he called himself, and the young ladies called him, Port Tobacco; heard Mrs. Surratt say she objected to Mr. Atzerodt; she did not like him, and that she would rather he did not come there to board; was not intimate with Mrs. Surratt; liked her very

much; she was a very kind lady to board with; was more intimate with her daughter; have seen John Wilkes Booth at Mrs. Surratt's three or four times. When he called, he spent most of his time in company with Mrs. Surratt; he would ask for Mr. John Surratt; if he was not there, for Mrs. Surratt.

Mrs. Surratt's eyesight was defective; never saw her read or sew after candlelight. I went to Church with Mrs. Surratt during Lent very often; she was very constant in her religious duties.

George B. Woods. Reside in Boston. I have been in the habit of seeing, in Boston, photographs of the leaders of the rebellion exposed for sale, the same as Union celebrities.

Augustus S. Howell. Met Louis J. Weichmann once at Mrs. Surratt's; remained there two days or more; went to Mrs. Surratt's because I knew them, and because it was cheaper than at an hotel.

When I saw Mr. Weichmann I showed him a cipher, and how to use it. Weichmann then made one himself.

(The cipher found among Booth's effects was exhibited to witness.)

The cipher I showed to Mr. Weichmann was the same as this; had some conversation with Mr. Weichmann with respect to his going South; he said he would like to go South. Mr. Weichmann said he would like to go South with me, but he was not ready, he said, to go at that time; but as soon as he got his business arranged he was going. He asked me if I thought he could get a position in Richmond. He told me that his

sympathies were with the South, and that he thought it would ultimately succeed. He expressed himself as a friend of the South, as a Southern man or a secesh sympathizer would.

Cross-examined. Have no particular occupation since I came out of the Confederate army; was in the First Maryland Artillery of the Confederate service up to July, 1862. Have been at Richmond about half a dozen times since I have known the Surratts; cannot say that I was known to my friends as a blockade-runner; generally write my name A. S. Howell. S stands for Spencer. My friends call me Spencer, but I seldom use the S in my name.

The cipher I showed to Weichmann I learned out of a magician's book.

Never met a person by the name of Mrs. Slater at Mrs. Surratt's house. I met a lady by that name in Washington, about the 20th or 22d of February, and had some conversation with her in front of Mrs. Surratt's house. We went to Virginia together. John H. Surratt was with her in the buggy; met Mrs. Slater in Richmond about the last of February.

Do not know anything of Weichmann's having quarreled with the Surratt family, because he was loyal and they were disloyal, nor did I know that it was his intention to glean from me all I knew for the purpose of turning me over to the military authorities; if so, he did not succeed; never took the oath of allegiance to the United States.

Miss Anna Ward. Reside at the Female (Catholic) School, on Tenth Street, Washington; have been acquainted with Mrs. Sur-

ratt between six and eight years. I know Mrs. Surratt's eyesight to be defective; she had failed to recognize me on the street; have not been very intimate with Mrs. Surratt. She always bore the character of a perfect lady and a Christian, as far as my acquaintance with her extended.

Cross-examined. My last visit to Mrs. Surratt's house was on the day of the assassination. Some time in February or March, perhaps, I went to the Herndon House to ask if there was a vacant room; did not engage a room; said nothing about its being for a delicate gentleman, for I did not know for whom it was intended; have met Mr. Weichmann, Mr. Holahan, and Mr. Booth at Mrs. Surratt's, but do not know that I ever met any of the prisoners at the bar there.

Rev. B. F. Wiget. Am President of the Gonzaga College, F Street; about ten or eleven years since became acquainted with Mrs. Mary E. Surratt; knew her well; have always heard every one speak very highly of her character as a lady and as a Christian.

Cross-examined. Have a personal knowledge of her general character as a Christian, but not of her character for loyalty. My visits were all short, and political affairs were never discussed; was not her pastor; cannot say I remember hearing her utter a loyal sentiment since the beginning of the rebellion; nor do I remember hearing any one talk about her as being notoriously disloyal before her arrest.

Rev. Francis E. Boyle. Am a Catholic priest, St. Peter's Church; made the acquaintance of Mrs. Mary E. Surratt nine

years ago; have heard her always well spoken of as an estimable lady, and never heard anything to her disadvantage; have never heard her utter any disloyal sentiments.

Rev. Charles H. Stonestreet. Am the pastor of St. Aloysius Church, this city; first became acquainted with Mrs. Mary E. Surratt twenty years ago; have always looked upon her as a proper Christian matron; there was no question of her loyalty.

Cross-examined. Do not remember having seen Mrs. Surratt, though I may have done so transiently, since the commencement of the rebellion; and of her character for loyalty since then I know nothing but what I have read in the papers.

Rev. Peter Lanihan. Am a Catholic priest, and reside near Beantown, Maryland; have been acquainted with Mrs. Mary E. Surratt for about thirteen years; intimately so for about nine years; she is a good Christian woman, and highly honorable; never heard her on any occasion express disloyal sentiments.

Rev. N. D. Young. Am a Catholic priest; became acquainted with Mrs. Mary E. Surratt about eight or ten years ago. My acquaintance has not been intimate; have occasionally seen her and visited her. Her reputation as far as I have heard, is that of a Christian lady, in every sense of the word; have heard her spoken of with the greatest praise, and never heard anything of her but what was highly favorable to her character. She never expressed any disloyal sentiments to me.

William L. Hoyle. Am not particularly acquainted with Mrs.

Surratt; have a store acquaintance only; know nothing of her, and have heard nothing against her; never heard her express any disloyal sentiments; never had any political conversation with her.

Cross-examined. Never heard Mrs. Surratt utter any political sentiment, loyal or disloyal; it was only as a customer that I knew her.

John T. Hoxton. Have known Mrs. Mary E. Surratt for a number of years. Since the rebellion have not met her very frequently; never had any conversation with her on political subjects. Her reputation in the neighborhood, as a truthful, Christian, kind lady, is very good, I believe; never heard anything to the contrary.

Am very well acquainted with J. Z. Jenkins. He was a good Union man up to 1862, I think. At the election of that year he was arrested, and since then I have understood that he had secession proclivities.

William W. Hoxton. Reside about a mile from Surrattsville; have known Mrs. Surratt, the prisoner at the bar, for about twelve years. She has always been looked upon as a very kind lady—to the sick especially—and a church-going woman; have seen her very often during the last four or five years, and never heard her utter a disloyal word.

Am acquainted with J. Z. Jenkins; he lives about a mile and a half from me. He was the strongest Union man I ever saw when the war broke out; but I have heard that he changed when he lost his negroes.

Rachel Semus (colored). Have lived at Mrs. Surratt's house for

six years. She treated her servants well all the time; never had reason to complain. Mrs. Surratt has fed Union soldiers at her house, sometimes a good

many of them. Her eyesight has been failing for a long time; very often I have had to go up stairs and thread her needle for her because she could not see to do it.

IN REBUTTAL.

John Ryan, Frank Stith, P. Young, P. T. Ransford testified to the loyal sentiments and good reputation of Louis J. Weichmann.

John T. Holahan. Up to the night of the assassination, boarded with Mrs. Surratt; saw Atzerodt several times, though I did not know him by that name; he seemed to be with John Surratt most of the time; saw Payne there once at breakfast. The name by which I knew him was Wood. John Wilkes Booth I have seen there frequently in the parlor with Mrs. Surratt and the young ladies; never knew the prisoner Herold to call there.

Never knew anything of Mrs. Surratt's defective eyesight while I lived with her; do not remember its being alluded to by any member of the household.

Cross-examined. Atzerodt passed by a nickname when he was at Mrs. Surratt's; was usually from home in the evening, and therefore cannot say whether Mrs. Surratt could read or sew by gaslight. I never heard any political conversation at Mrs. Surratt's, and never heard of any plot to capture the President, or of any plot or conspiracy to assassinate the President, or any members of his cabinet; if I had, I should have endeavored to prevent it.

To *Mr. Ewing.* Never saw or knew of Mr. Judson Jarboe, or of any person by the name of

Jarboe coming to Mrs. Surratt's, nor have I ever known of Dr. Mudd coming there; never heard his name mentioned.

Saw Mr. Weichmann the morning after the murder; he was a good deal excited. About 2 o'clock that morning detectives of the Metropolitan Police entered Mrs. Surratt's house. Mr. Weichmann opened the door for them.

James McDevitt. On the night of the assassination, went to Mrs. Surratt's house with several officers of the department. We rang the bell, when a lady put her head out of the window and asked who was there. We said we wished to enter the house. Mr. Weichmann opened the door; he was in his shirt, which was all open in front; he had his pants on, and was, I think, in his stocking feet. He appeared as if he had just got out of bed. He had time from the moment we rang to dress himself to that extent. We did not arrest Mr. Weichmann then, but we did subsequently when he came to our office. Mr. Weichmann accompanied me to Canada; took him to identify John H. Surratt. He went with me willingly in pursuit of the assassins, and was zealous and earnest in performing the part allotted him in the pursuit; and though he had every opportunity to escape, he did not; left him in Canada when I returned to New York.

Cross-examined. Mr. Weichmann came to our office the morn-

ing after the assassination, with Mr. Holahan. Weichmann made no confession in regard to himself. We did not find John H. Surratt in Canada; received the first intimation that John H. Surratt would be likely to be found in Canada from Mr. Weichmann. Mrs. Surratt also told me the morning after the assassination, that she had received a letter from him on the 14th, dated in Canada.

Andrew Kallenbach. Reside near Surrattsville. On 17th April last, had a conversation with Mr. J. Z. Jenkins, at Mr. Lloyd's house at Surrattsville. He said that I was a liar; that he understood I had been telling some lies on him, and if he found it to be true, he would give me the damnedest whipping I ever had. He said if I testified against him, or any one connected with him, he would give me a damned whipping. This was said in the presence of Mr. Cottingham and Mr. Joshua Lloyd. Jenkins had been drinking, but I cannot say that he was drunk on the occasion; have known Mr. Jenkins about ten years, I think. He has always said in my presence that he was a Union man; and I have never heard him express any disloyal sentiments; cannot say what his reputation for loyalty is in the neighborhood.

Cross-examined. Nothing had been said by me that night to induce Jenkins to call me a liar; have a son in the rebel army; he went there of his own choice, and without my consent; have lived as a neighbor of Mrs. Surratt's for many years. In politics have been a Democrat all my life. I have never expressed any dis-

loyal sentiments, and have never said that I wished the South would succeed.

E. L. Smoot. I live about a mile from Surrattsville; am acquainted with J. Z. Jenkins, Mrs. Surratt's brother. He was represented as a Union man during the first year of the war, but after that, by most persons, he was looked upon as a Southern sympathizer. I have heard him say he was a friend to the South, and an enemy to the Government during the struggle.

Know Joseph T. Nott, of Surrattsville. On the day after the President's murder, met two young men connected with General Augur's headquarters, one of whom told me that John H. Surratt was supposed to be the man who attempted to kill Mr. Seward; asked Mr. Nott if he could tell me where John Surratt was; he smiled and told me he reckoned John was in New York by that time; asked him why he thought so, and he said, My God! John knows all about the murder, do you suppose he is going to stay in Washington and let them catch him? pretended to be very much surprised and said, Is that so? He replied, It is so, by God! I could have told you that this thing was coming to pass six months ago. Then he put his hand on my shoulder and said, Keep that in your own skin, my boy. Don't mention that; if you do, it will ruin me forever. I have heard him speak against the Government frequently, and denounce the administration in every manner and form; heard him say that, if the South did not succeed, he did not want to live another day.

A. V. Roby, Dorley B. Roby, Thompson also testified as to the *William A. Evans and John L.* disloyalty of *J. Z. Jenkins.*

GENERAL HOWE. *Mr. President.* It is well known to me, and to very many of the officers of the army that Edward Johnson, the person who is now introduced as a witness, was educated at the National Military Academy at the Government expense, and that, since that time, for years he held a commission in the army of the United States. It is well known in the army that it is a condition precedent to receiving a commission, that the officer shall take the oath of allegiance and fidelity to the Government. In 1861 it became my duty as an officer to fire upon a rebel party, of which this man was a member, and that party fired upon, struck down, and killed loyal men that were in the service of the Government. Since that time, it is notorious to all the officers of the army that the man who is introduced here as a witness, has openly borne arms against the United States, except when he has been a prisoner in the hands of the Government. He is brought here now as a witness to testify before this Commission, and he comes with his hands red with the blood of his loyal countrymen, shed by him or by his assistance, in violation of his solemn oath as a man, and his faith as an officer. I submit to this Commission that he stands in the eye of the law as an incompetent witness, because he is notoriously infamous. To offer as a witness a man of this character, who has openly violated the obligation of his oath, and his faith as an officer, and to administer the oath to him and present his testimony, is but an insult to the Commission, and an outrage upon the administration of justice. I move, therefore, that this man, Edward Johnson, be ejected from the Court as an incompetent witness on account of his notorious infamy, on the grounds I have stated.

GENERAL EGIN. I rise, sir, to second the motion, and I am glad the question is now presented to the Commission. I regard the gentleman clearly incompetent as a witness. That one who has been educated, nourished and protected by the Government, and, in direct charged upon me, that I designed any insult to the Commission in violation of his oath, has taken up arms against the Government, should present himself as a witness before this Commission, I regard as the height of impertinence, and I trust, therefore, that the motion will be adopted without a moment's hesitation.

Mr. Aiken. I was not aware that the fact of a person's having borne arms against the United States disqualified him from becoming a witness in a court of justice; and, therefore, it cannot be introducing General Johnson as a witness here. It will be recollected that Mr. Jett, who has also borne arms against the Government, was introduced here as an important witness by the prosecution; and he, according to his own statement, had never taken the oath of allegiance and his testimony, at that time, was not objected to.

The Judge Advocate. If it please the Court, the rule of law on this point is, that before a witness can be rendered so infamous as to become absolutely incompetent to testify, he must have been convicted by a judicial proceeding, and the record of his conviction must

be presented as a basis of his rejection. All evidences of his guilt that fall short of that conviction affect only his credibility. This Court can discredit him just as far as they please upon that ground; but I do not think the rule of law, as now understood, would authorize the Court to declare him an incompetent witness, and incapable of testifying, however unworthy of credit he may be.

GENERAL WALLACE. For the sake of the character of this investigation, for the sake of public justice—not for the sake of the person introduced as a witness, but for the persons who are at the bar on trial—I ask the General who makes the motion to withdraw it.

GENERAL HOWE. On the statement of the Judge Advocate General, that this witness is technically and legally a competent witness, I withdraw the objection.

Edward Johnson. Am at present, a United States prisoner of war, confined at Fort Warren, Boston Harbor. Since February, 1863, have been a Major-General in the Confederate States army.

Am acquainted with the man who went by the name of Henry Von Steinacker. He was a private on engineer duty; was not an officer either of the engineers, the staff, or of the line. He belonged to the Second Virginia Infantry, one of the brigades of my division. In May, 1863, a man accosted me in Richmond, on the Capitol Square; told me he had served under me as a private in the United States army, and applied for a position in the engineer corps; told me that he was a Prussian by birth, and an engineer by education; told him I could not give him a position in either; but if he would enlist himself as a private, and if he was what he represented himself, an engineer and draftsman, would put him on duty as a private under an engineer officer of my staff. Under these conditions he enlisted. I attached him to headquarters, and assigned him to special duty under an engineer officer.

Never heard of any secret meeting of the officers at the

camp of the Second Virginia Regiment; never knew of any plans discussed for the assassination of the President of the United States; never heard his assassination alluded to by any officer of my division as an object to be desired; nor did I ever hear, while in the South, of a secret association called the Knights of the Golden Circle, or Sons of Liberty, nor have I ever known of any one belong to them or reputed to belong to them.

Never saw John Wilkes Booth and never heard of him till after the assassination of the President. Steinacker told me that he was a deserter from the United States service.

Cross-examined. Graduated at West Point Military Academy in 1838, and was in the United States service till the breaking out of the rebellion.

Oscar Heinrichs. Served as engineer officer on the staff of General Edward Johnson, and on the staff of other general officers of the Confederate States army.

Am acquainted with Henry Von Steinacker; he was detailed to me as a draftsman shortly after General Johnson took command of my division, and I employed him as such. He had

neither rank nor the pay of an engineer officer.

Am not acquainted with J. Wilkes Booth, the actor; never saw a person calling himself by that name in our camp; nor did any secret meeting of officers ever, to my knowledge, take place in that camp, where plans for the assassination of President Lincoln were discussed.

H. K. Douglas. I have held several commissions in the Confederate States service; served on the staff of six general officers—Generals Edward Johnson, Early, Gordon, Pegram, Walker, and Ramsey.

Know a man named Von Steinaecker; he was in the Second Virginia Infantry, the Stonewall Brigade; do not know of any secret meeting being held in our camp for the discussion of plans for the assassination of the President of the United States.

Wish to say that the officers of that brigade, that their integrity as men, and their gallantry as soldiers, would forbid them from being implicated in any such plot as the assassination of Mr. Lincoln; and in their behalf I desire to say, that I do not believe they knew anything about it, or in the least degree sympathized with so unrighteous an act.

Steinaecker acknowledged to me, on several occasions, that he was a deserter from the Northern army; never heard of the existence of any secret treasonable societies, organized for the assassination of the President of the United States; never was a member of the Knights of the Golden Circle or Sons of Liberty, nor do I know of any of the General's staff being connected with that organization; never heard it declared in Richmond that President Lincoln ought to be assassinated.

MR. REVERDY JOHNSON, FOR THE DEFENSE.

Mr. Johnson. Mr. President and Gentlemen of the Commission: Has the Commission jurisdiction of the cases before it, is the question which I propose to discuss. That question, in all courts, civil, criminal, and military, must be considered and answered affirmatively before judgment can be pronounced. And it must be answered correctly, or the judgment pronounced is void. Ever an interesting and vital inquiry, it is of engrossing interest and of awful importance when error may lead to the unauthorized taking of human life. In such a case, the court called upon to render, and the officer who is to approve its judgment and have it executed, have a concern peculiar to themselves. As to each, a responsibility is involved which, however conscientiously and firmly met, is calculated and cannot fail to awaken great solicitude

and induce the most mature consideration. The nature of the duty is such that even honest error affords no impunity. The legal personal consequences, even in a case of honest, mistaken judgment, cannot be avoided. That this is no exaggeration, the Commission will, I think, be satisfied before I shall have concluded. I refer to it now, and shall again, with no view to shake your firmness. Such an attempt would be alike discourteous and unprofitable. Every member comprising the Commission will, I am sure, meet all the responsibility that belongs to it as become gentlemen and soldiers. I therefore repeat that my sole object in adverting to it is to obtain a well considered and matured judgment. So far the question of jurisdiction has not been discussed. The pleas which specially present it, as soon as filed, were overruled. But that will not, because properly it should not, prevent your considering it with the deliberation that its grave nature demands. And it is for you to decide it, and at this time for you alone. The commission you are acting under of itself does not and could not decide it. If unauthorized it is a mere nullity—the usurpation of a power not vested in the Executive, and conferring no authority whatever upon you. To hold otherwise would be to make the Executive the exclusive and conclusive judge of its own powers, and that would be to make that department omnipotent. The powers of the President under the Constitution are great, and amply sufficient to give all needed efficiency to the office. The convention that formed the Constitution, and the people who adopted it, considered those powers sufficient, and granted no others. In the minds of both (and subsequent history has served to strengthen the impression) danger to liberty was no more to be dreaded from the Executive than from any other department of the Government. So far, therefore, from meaning to extend its powers beyond what was deemed necessary to the wholesome operation of the Government, they were studious to place them beyond the reach of abuse. With this view, before entering “on the execution of his office,” the President is required to take an oath “faithfully” to discharge its duties, and to the best of his “ability preserve, protect, and de-

fend the Constitution of the United States." He is also liable to "be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." If he violates the Constitution; if he fails to preserve it; and, above all, if he usurps powers not granted, he is false to his official oath, and liable to be indicted and convicted, and to be impeached. For such an offense his removal from office is the necessary consequence. In such a contingency, "he shall be removed" is the command of the Constitution. What stronger evidence could there be that his powers, all of them, in peace and in war, are only such as the Constitution confers? But if this was not evident from the instrument itself, the character of the men who composed the Convention, and the spirit of the American people at that period, would prove it. Hatred of a monarchy, made the more intense by the conduct of the monarch from whose government they had recently separated, and a deep-seated love of constitutional liberty, made the more keen and active by the sacrifices which had illustrated their revolutionary career, constituted them a people who could never be induced to delegate any executive authority not so carefully restricted and guarded as to render its abuse or usurpation almost impossible. If these observations are well founded—and I suppose they will not be denied—it follows that an executive act beyond authority can furnish no defense against the legal consequences of what is done under it. I have said that the question of jurisdiction is ever open. It may be raised by counsel at any stage of the trial, and if it is not, the Court not only may, but is bound to notice it. Unless jurisdiction then exists, the authority to try does not exist, and whatever is done is "*coram non judice*," and utterly void. This doctrine is as applicable to military as to other courts.

O'Brien tells us that the question may be raised by demurrer if the facts charged do not constitute an offense, or if they do, not an offense cognizable by a military court, or that it may be raised by a special plea, or under the general one of not guilty.

DeHart says: The Court "is the judge of its own compe-

tency at any stage of its proceedings, and is bound to notice questions of jurisdiction whenever raised."

The question then being always open, and its proper decision essential to the validity of its judgment, the Commission must decide before pronouncing such judgment whether it has jurisdiction over these parties and the crimes imputed to them. That a tribunal like this has no jurisdiction over other than military offenses, is believed to be self-evident. That offenses defined and punished by the civil law, and whose trial is provided for by the same law, are not the subjects of military jurisdiction, is of course true. A military, as contradistinguished from a civil offense, must therefore be made to appear, and when it is, it must also appear that the military law provides for its trial and punishment by a military tribunal. If that law does not furnish a mode of trial, or affix a punishment, the case is unprovided for, and, as far as the military power is concerned, is to go unpunished. But as either the civil, common, or statute law embraces every species of offense that the United States, or the States have deemed it necessary to punish, in all such cases the civil courts are clothed with every necessary jurisdiction. In a military court, if the charge does not state a "crime provided for generally or specifically by any of the articles of war," the prisoner must be discharged. *O'Brien*, p. 235. Nor is it sufficient that the charge is of a crime known to the military law. The offender, when he commits it, must be subject to such law, or he is not subject to military jurisdiction. The general law has "supreme and undisputed jurisdiction over all. The military law puts forth no such pretensions; it aims solely to enforce on the soldier the additional duties he has assumed. It constitutes tribunals for the trial of breaches of military duty only." *O'Brien*, 26, 27. "The one code (the civil) embraces all citizens, whether soldiers or not; the other (the military) has no jurisdiction over any citizen as such." *Ibid.*

The provisions of the Constitution clearly maintain the same doctrine. The Executive has no authority "to declare war, to raise and support armies, to provide and maintain a navy," or to make "rules for the government and regulation"

of either force. These powers are exclusively in Congress. An army cannot be raised or have law for its government and regulation except as Congress shall provide. This power of Congress to govern and regulate the army and navy, was granted by the convention without objection. In England, the King, as the generalissimo of the whole kingdom, has this sole power, though Parliament has frequently interposed and regulated for itself. But with us, it was thought safest to give the entire power to Congress, "since otherwise summary and severe punishments might be inflicted at the mere will of the Executive." 3 *Story's Com.*, sect. 1192. No member of the Convention, or any commentator on the Constitution since, has intimated that even this Congressional power could be applied to citizens not belonging to the army or navy. In respect, too, to the latter class, the power was conferred exclusively on Congress to prevent that class being made the object of abuse by the Executive—to guard them especially from "summary and severe punishments" inflicted by mere Executive will. The existence of such a power being vital to discipline, it was necessary to provide for it. But no member suggested that it should be or could be made to apply to citizens not in the military service, or be given to any other department, in whole or in part, than Congress. Citizens not belonging to the army or navy were not made liable to military law, or under any circumstances to be deprived of any of the guaranties of personal liberty provided by the Constitution. Independent of the consideration that the very nature of the Government is inconsistent with such a pretension, the power is conferred upon Congress in terms that exclude all who do not belong to "the land and naval forces." It is a rule of interpretation coeval with its existence, that the government, in no department of it, possesses powers not granted by express delegation or necessarily to be implied from those that are granted. This would be the rule incident to the very nature of the Constitution, but to place it beyond doubt, and to make it an imperative rule, the 10th amendment declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are

reserved to the States respectively, or to the people." The power given to Congress, "is to make rules for the government and regulation of the land and naval forces." No artifice of ingenuity can make these words include those who do not belong to the army and navy; and they are therefore to be construed to exclude all others, as if negative words to that effect had been added. And this is not only the obvious meaning of the terms, considered by themselves, but is demonstrable from other provisions of the Constitution. So jealous were our ancestors of ungranted power, and so vigilant to protect the citizen against it, that they were unwilling to leave him to the safeguards which a proper construction of the Constitution, as originally adopted, furnished. In this they resolved that nothing should be left in doubt. They determined, therefore, not only to guard him against executive and judicial, but against Congressional abuse. With that view, they adopted the fifth constitutional amendment, which declares that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger." This exception is designed to leave in force, not to enlarge the powers vested in Congress by the original Constitution, "to make rules for the government and regulation of the land and naval forces." "The land or naval forces" are the terms used in both, have the same meaning, and until lately, have been supposed by every commentator and judge, to exclude from military jurisdiction offenses committed by citizens not belonging to such force. Kent, in a note to his 1 Coms., p. 341, states, and with accuracy, that "military and naval crimes and offenses committed while the party is attached to and under the immediate authority of the army and navy of the United States and in actual service, are not cognizable under the common law jurisdiction of the civil courts of the United States." According to this great authority every other class of persons and every other species of offense, are within the jurisdiction of the civil courts, and entitled to the protection of

the proceeding by presentment or indictment, and a public trial in such a court. If the constitutional amendment has not that effect, if it does not secure that protection to all who do not belong to the army or navy, then the provisions in the sixth amendment are equally inoperative. They, "in all criminal prosecutions," give the accused a right to a speedy and public trial; a right to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to compulsory process for his witnesses, and the assistance of counsel. The exception in the 5th amendment of cases arising in the land or naval forces applies by necessary implication, at least in part, to this. To construe this as not containing the exception would defeat the purpose of the exception; for the provisions of the 6th amendment unless they are subject to the exceptions of the 5th, would be inconsistent with the 5th. The 6th is therefore to be construed as if it in words contained the exception. It is submitted that this is evident. The consequence is, that if the exception can be made to include those who, in the language of Kent, are not, when the offense was committed, "attached to and under the immediate authority of the army or navy, and in actual service," the securities designed for other citizens by the 6th article are wholly nugatory. If a military commission, created by the mere authority of the President, can deprive a citizen of the benefit of the guaranties secured by the 5th amendment, it can deprive him of those secured by the 6th. It may deny him the right to a "speedy and public trial," information "of the nature and cause of the accusation," of the right "to be confronted with the witnesses against him," of compulsory process for his witnesses," and of "the assistance of counsel for his defense." That this can be done no one has as yet maintained; no opinion, however latitudinarian, of executive power, of the effect of public necessity, in war or in peace, to enlarge its sphere, and authorize a disregard of its limitations; no one, however convinced he may be of the policy of protecting accusing witnesses from a public examination, under the idea that their testimony cannot otherwise be obtained, and that crime may conse-

quently go unpunished, has to this time been found to go to that extent. Certainly, no writer has ever maintained such a doctrine. Argument to refute it, is unnecessary. It refutes itself. For, if sound, the 6th amendment, which our fathers thought so vital to individual liberty when assailed by governmental prosecution, is but a dead letter, totally inefficient for its purpose whenever the Government shall deem it proper to try a citizen by a military commission. Against such a doctrine the very instincts of freemen revolt. It has no foundation but in the principle of unrestrained, tyrannic power, and passive obedience. If it be well founded, then are we indeed a nation of slaves, and not of freemen. If the Executive can legally decide whether a citizen is to enjoy the guaranties of liberty afforded by the Constitution, what are we but slaves? If the President, or any of his subordinates, upon any pretense whatever, can deprive a citizen of such guaranties, liberty with us, however loved, is not enjoyed. But the Constitution is not so fatally defective. It is subject to no such reproach. In war and in peace, it is equally potential for the promotion of the general welfare, and as involved in and necessary to such welfare, for the protection of the individual citizen. Certainly, until this rebellion, this has been the proud and cherished conviction of the country. And it is to this conviction and the assurance that it could never be shaken that our past prosperity is to be referred. God forbid that mere power, dependent for its exercise on Executive will (a condition destructive of political happiness), shall ever be substituted in its place. Should that unfortunately ever occur, unless it was soon corrected by the authority of the people, the objects of our Revolutionary struggle, the sacrifices of our ancestors, and the design of the Constitution will all have been in vain.

I proceed now to examine with somewhat of particularity the grounds on which I am informed your jurisdiction is maintained.

1st. That it is an incident of the war power.

I. That power, whatever be its extent, is exclusively in Congress. War can only be declared by that body. With

its origin the President has no concern whatever. Armies, when necessary, can only be raised by the same body. Not a soldier, without its authority, can be brought into service by the Executive. He is as impotent to that end as a private citizen. And armies, too, when raised by Congressional authority, can only be governed and regulated by "rules" prescribed by the same authority. The Executive possesses no power over the soldier except such as Congress may, by legislation, confer upon him. If, then, it was true that the creation of a military commission like the present is incidental to the war power, it must be authorized by the department to which that power belongs, and not by the Executive, to whom no portion of it belongs. And if it be said to be involved in the power "to make rules for the government and regulation of the land and naval forces," the result is the same. It must be done by Congress, to whom that power also exclusively belongs, and not by the Executive. Has Congress, then, under either power, authorized such a commission as this to try such cases as these? It is confidently asserted that it has not. If it has, let the statute be produced. It is certainly not done by that of the 10th of April, 1806, "establishing articles for the government of the armies of the United States." No military courts are there mentioned or provided for but courts-martial and courts of inquiry. And their mode of appointment and organization, and of proceeding, and the authority vested in them are also prescribed. Military commissions are not only authorized, but are not even alluded to. And, consequently, the parties, whoever these may be, who, under that act, can be tried by courts-martial or courts of inquiry, are not made subject to trial by a military commission. Nor is such a tribunal mentioned in any prior statute, or in any subsequent one, until those of the 17th of July, 1862, and of the 3d of March, 1863. In the 5th section of the first, the records of "military commissions are to be returned for revision to the Judge Advocate General," whose appointment it also provides for. But how such commissions are to be constituted, what powers they are to have, how their proceedings are to

be conducted, or what cases and parties they are to try, is not provided for. In the 38th section of the second, they are mentioned as competent to try persons "lurking or acting as spies." The same absence in the particulars stated in respect to the first is true of this. And as regards this act of 1863, this reflection forcibly presents itself. If military commissions can be created, and from their very nature possess jurisdiction to try all alleged military offenses (the ground on which your jurisdiction, it is said, in part rests), why was it necessary to give them the power, by express words, to try persons "lurking or acting as spies?" The military character of such an offense could not have been doubted. What reason, then, can be suggested for conferring the power by express language than that without it it would not be possessed? Before these statutes a commission, called a military commission, had been issued by the Executive to Messrs. Davis, Holt and Campbell, to examine into certain military claims against the Western Department, and Congress, by its resolution of the 11th of March, 1862 (No. 18), provided for the payment of its awards. Against a commission of that character no objection can be made. It is but ancillary to the auditing of demands upon the Government, and in no way interferes with any constitutional right of the citizen. But until this rebellion a military commission like the present, organized in a loyal State or Territory where the courts are open and their proceedings unobstructed, clothed with the jurisdiction attempted to be conferred upon you—a jurisdiction involving not only the liberty, but the lives of the parties on trial—it is confidently stated, is not to be found sanctioned or the most remotely recognized, or even alluded to, by any writer on military law in England or the United States, or in any legislation of either country. It has its origin in the rebellion, and like the dangerous heresy of secession, out of which that sprung, nothing is more certain in my opinion than that, however pure the motives of its origin, it will be considered, as it is, an almost equally dangerous heresy to constitutional liberty, and the rebellion ended, perish with the other, then and forever. But to proceed; such commis-

sions were authorized by Lieutenant General Scott in his Mexican campaign. When he obtained possession of the City of Mexico, he, on the 17th of September, 1847, republished, with additions, his order of the 19th of February preceding, declaring martial law. By this order, he authorized the trial of certain offenses by military commissions, regulated their proceedings, and limited the punishments they might inflict. From their jurisdiction, however, he excepts cases "clearly cognizable by court-martial," and in words limits the cases to be tried to such as are (I quote) "not provided for in the act of Congress establishing rules and articles for the government of the armies of the United States," of the 10th of April, 1806. The second clause of the order mentions, among other offenses to be so tried, "assassination, murder, poisoning;" and in the fourth (correctly, as I submit, with all respect for a contrary opinion), he states that "the rules and articles of war" do not provide for the punishment of any one of the designated offenses, "even when committed by individuals of the army upon the persons or property of other individuals of the same, except in the very restricted case in the 9th of the articles." The authority, too, for even this restricted commission—Scott—not more eminent as soldier than civilian—placed entirely upon the ground that the named offenses, if committed in a foreign country by American troops, could not be punished under any law of the United States then in force. "The Constitution of the United States and the rules and articles of war," he said, and said correctly, provided no court for their trial or punishment, "no matter by whom, or on whom" committed. (Scott's Autobiography, 392.)

And he further tells us that even this order, so limited and so called for by the greatest public necessity, when handed to the then Secretary of War (Mr. Marcy) "for his approval," "a startle at the title (martial law order) was the only comment he then, or ever, made on the subject," and that it was "soon silently returned as too explosive for safe handling." "A little later (he adds) the Attorney-General (Mr. Cushing) called and asked for a copy, and the law officer of the

Government, whose business it is to speak on all such matters, was stricken with legal dumbness," *Ib.* How much more startled and more paralyzed would these great men have been had they been consulted on such a commission as this!—a commission, not to sit in another country, and to try offenses not provided for by any law of the United States, civil or military, but in their own country, and in a part of it where there are laws providing for their trial and punishment, and civil courts clothed with ample powers for both, and in the daily and undisturbed exercise of their jurisdiction; and where, if there should be an attempt at disturbance by a force which they had not the power to control, they could invoke (and it would be his duty to afford it) the President to use the military power at his command, and which everybody knows to be ample for the purpose.

If it be suggested that the civil courts and juries for this district could not safely be relied upon for the trial of these cases, because either of incompetency, disloyalty or corruption, it would be an unjust reflection upon the judges, upon the people, upon the Marshal, an appointee of the President, by whom the juries are summoned, and upon our civil institutions themselves—upon the very institutions on whose integrity and intelligence the safety of our property, liberty and lives, our ancestors thought, could not only be safely rested, but would be safe nowhere else. If it be suggested that a secret trial, in whole or in part, as the Executive might deem expedient, could not be had before any other than a military tribunal, the answer is that the Constitution, "in all criminal prosecutions," gives the accused "the right to a "public trial." So abhorrent were private trials of our ancestors, so fatal did they deem them to individual security, that they were thus denounced, and, as they no doubt thought, so guarded against as in all future time to be impossible. If it be suggested that witnesses may be unwilling to testify, the answer is that they may be compelled to appear and made to testify.

But the suggestion, upon another ground, is equally without force. It rests on the idea that the guilty only are ever

brought to trial—that the only object of the Constitution and laws in this regard is to afford the means to establish alleged guilt; that accusation, however made, is to be esteemed *prima facie* evidence of guilt, and that the Executive should be armed, without other restriction than his own discretion, with all the appliances deemed by him necessary to make the presumption from such evidence conclusive. Never was there a more dangerous theory. The peril to the citizen from a prosecution so conducted, as illustrated in all history, is so great that the very elementary principles of constitutional liberty, the spirit and letter of the Constitution itself repudiate it.

II. Innocent parties, sometimes by private malice, sometimes for a mere partisan purpose, sometimes from a supposed public policy, have been made the subjects of criminal accusation. History is full of such instances. How are such parties to be protected if a public trial, at the option of the Executive, can be denied them, and a secret one, in whole, or in part, substituted? If the names of the witnesses, and their evidence, are not published, what obstacle does it not interpose to establish their innocence? The character of the witnesses against them may be all important to that end. Kept in prison, with no means of consulting the outer world, how can they make the necessary inquiries? How can those who may know the witnesses be able to communicate with them on the subject? A trial so conducted, though it may not, as, no doubt, is the case in the present instance, be intended to procure the punishment of any but the guilty, it is obvious, subjects the innocent to great danger. It partakes more of the character of the Inquisition, which the enlightened civilization of the age has driven almost wholly out of existence, than of a tribunal suited to a free people. In the palmiest days of that tribunal, kings, as well as people, stood abashed in its presence, and dreaded its power. The accused was never informed of the names of his accusers; heresy, suspected, was ample ground for arrest; accomplices and criminals were received as witnesses, and the whole trial was secret, and conducted in a chamber almost as silent as the grave. It was long since denounced by the civilized world, not because it

might not at times punish the heretic (then, in violation of all rightful human power, deemed a criminal), but because it was as likely to punish the innocent as the guilty. A public trial, therefore, by which the names of witnesses and the testimony are given, even in monarchical and despotic Governments, is now esteemed amply adequate to the punishment of guilt, and essential to the protection of innocence. Can it be that this is not true of us? Can it be that a secret trial, wholly or partially, if the Executive so decides, is all that an American citizen is entitled to? Such a doctrine, if maintained by an English monarch, would shake his government to its very center, and, if persevered in, would lose him his crown. It will be no answer to these observations to say that this particular trial has been only in part a secret one, and that secrecy will never be resorted to, except for purposes of justice. The reply is, that the principle itself is inconsistent with American liberty, as recognized and secured by constitutional guaranties. It supposes that, whether these guaranties are to be enjoyed in the particular case, and to what extent, is dependent on Executive will. The Constitution, in this regard, is designed to secure them in spite of such will. Its patriotic authors intended to place the citizen, in this particular, wholly beyond the power, not only of the Executive, but of every department of the Government. They deemed the right to a public trial vital to the security of the citizen, and especially and absolutely necessary to his protection against Executive power. A public trial of all criminal prosecutions they, therefore, secured by general and unqualified terms. What would these great men have said, had they been asked so as to qualify the terms as to warrant its refusal, under any circumstances, and make it dependent upon Executive discretion? The member who made the inquiry would have been deemed by them a traitor to liberty or insane. What would they have said if told that, without such qualification, the Executive would be able legally to impose it as incidental to Executive power? If not received with derision, it would have been indignantly rejected as an imputation upon those who, at any time thereafter, should legally fill the office.

III. Let me present the question in another view. If such a Commission as this, for the trial of cases like the present, can be legally constituted, can it be done by mere Executive authority?

1. You are a Court, and, if legally existing, endowed with momentous power, the highest known to man, that of passing upon the liberty or life of the citizen. By the express words of the Constitution an army can only be raised, and governed and regulated, by laws passed by Congress. In the exercise of the power to rule and govern it, the act before referred to, of the 10th of April, 1806, establishing the articles of war, was passed. That act provides only for courts-martial and courts of inquiry, and designates the cases to be tried before each, and the laws that are to govern the trial. Military commissions are not mentioned, and, of course, the act contains no provision for their government. Now, it is submitted, as perfectly clear, that the creation of a court, whether civil or military, is an exclusive legislative function, belonging to the department upon which the legislative power is conferred. The jurisdiction of such a court, and the laws and regulations to guide and govern it, is also exclusively legislative. What cases are to be tried by it, how the judges are to be selected, and how qualified, what are to be the rules of evidence, and what punishments are to be inflicted, all solely belong to the same department. The very element of constitutional liberty, recognized by all modern writers on government as essential to its security, and carefully incorporated into our Constitution, is a separation of the legislative, judicial and executive powers. That this separation is made in our Constitution, no one will deny. Article 1st declares that "All legislative powers herein granted shall be vested in a Congress." Article 2d vests "the Executive power" in a President, and Article 3d, "the judicial power" in certain designated courts, and in courts to be thereafter constituted by Congress. There could not be a more careful segregation of the three powers. If, then, courts, their laws, modes of proceeding, and judgments, belong to legislation (and this, I suppose, will not be questioned), in the absence of legisla-

tion in regard to this Court, and its jurisdiction to try the present cases, it has for that purpose no legal existence or authority. The Executive, whose functions are altogether executive, cannot confer it. The offenses to be tried by it, the laws to govern its proceedings, the punishment it may award, cannot, for the same reason, be prescribed by the Executive. These, as well as the mere constitution of the Court, all exclusively belong to Congress. If it be contended that the Executive has the powers in question, because by implication they are involved in the war power, or in the President's constitutional functions as commander-in-chief of the army, then this consequence would follow, that they would not be subject to Congressional control, as that department has no more right to interfere with the constitutional power of the Executive than that power has a right to interfere with that of Congress. If, by implication, the powers in question belong to the Executive, he may not only constitute and regulate military commissions, and prescribe the laws for their government, but all legislation upon the subject by Congress would be usurpation. That the proposition leads to this result would seem to be clear, and, if it does, that result itself is so inconsistent with all previous legislation, and all executive practice, and so repugnant to every principle of constitutional liberty, that it demonstrates its utter unsoundness. Under the power given to Congress, "to make rules for the government and regulation of the land" forces, they have, from time to time, up to and including the act of the 10th of April, 1806, and since, enacted such rules as they deemed to be necessary, as well in war, as in peace, and their authority to do so has never been denied. This power, too, to govern and regulate, from its very nature, is exclusive. Whatever is not done under it, is to be considered as purposely omitted. The words used in the delegation of the power, "govern and regulate," necessarily embrace the entire subject, and exclude all like authority in others. The end of such a power cannot be attained, except through uniformity of government and regulation, and this is not to be attained if the power is in two hands. To be effective, therefore, it must be in one, and the

Constitution gives it to one—to Congress—in express terms, and nowhere intimates a purpose to bestow it, or any portion of it, upon any other department. In the absence, then, of all mention of military commissions in the Constitution, and in the presence of the sole authority it confers on Congress, by rules of its own enacting, to govern and regulate the army, and, in the absence of all mention of such commissions in the act of the 10th of April, 1806, and of a single word in that act, or in any other, how can the power be considered as in the President? Further, upon what ground, other than those I have examined, can his authority be placed?

I. Is it that the constitutional guaranties referred to are designed only for a state of peace? There is not a syllable in the instrument that justifies, even plausibly, such a qualification. They are secured by the most general and comprehensive terms, wholly inconsistent with any restriction. They are, also, not only not confined to a condition of peace, but are more peculiarly necessary to the security of personal liberty in war than in peace. All history tells us that war, at times, maddens the people, frenzies government, and makes both regardless of constitutional limitations of power. Individual safety, at such periods, is more in peril than at any other. Constitutional limitations and guaranties are, then, also absolutely necessary to the protection of the Government itself. The maxim, "*Salus populi suprema est lex*," is but fit for a tyrant's use. Under its pretense the grossest wrongs have been committed, the most awful crimes perpetrated, and every principle of freedom violated, until, at last, worn down by suffering, the people in very despair, have acquiesced in a resulting despotism. The safety which liberty needs, and without which it sickens and dies, is that which law, and not mere unlicensed human will, affords. The Aristotelian maxim, "*Salus publica suprema est lex*"—"Let the public weal be under the protection of the law"—is the true and only safe maxim. Nature, without law, would be chaos; government, without law, anarchy or despotism. Against both these last, in war and in peace, the Constitution happily protects us.

II. If the power in question is claimed under the author-

ity supposed to be given the President in certain cases to suspend the writ of habeas corpus and to declare martial law, the claim is equally, if not more evidently, untenable.

1. Because the first of these powers, if given to the President at all, is given "when, in cases of rebellion or invasion," he deems the public safety requires it. I think he has this power, but there are great and patriotic names who think otherwise. But if he has it, or if it be in Congress alone, it is entirely untrue that its exercise works any other result than the suspension of the writ—the temporary suspension of the right of having the cause of arrest passed upon at once by the civil judges. It in no way impairs or suspends the other rights secured to the accused. In what court he is to be tried, how he is to be tried, what evidence is to be admitted, and what judgment pronounced are all to be what the Constitution secures, and the laws provide in similar cases, when there is no suspension of the writ. The purpose of the writ is merely, without delay, to ascertain the legality of the arrest. If adjudged legal, the party is detained; if illegal, discharged. But in either contingency, when he is called to answer any criminal accusation, and he is a civilian, and not subject to the articles of war constitutionally enacted by Congress, it must be done by presentment or indictment, and his trial be had in a civil court, having, by State or Congressional legislation, jurisdiction over the crime and under laws governing the tribunal and defining the punishment. The very fact, too, that express power is given in a certain condition of things to suspend the writ referred to, and that no power is given to suspend or deny any of the other securities for personal liberty provided by the Constitution, is conclusive to show that all of the latter were designed to be in force "in cases of rebellion or invasion," as well as in a state of perfect peace and safety.

III. I have already referred to the act of 1806 establishing the articles of war, and said what must be admitted, that it provides for no military court like this. But for argument's sake, let it be conceded that it does. And I then maintain,

with becoming confidence and due respect for a different opinion, that it does not embrace the crimes charged against these parties or the parties themselves.

First. The charge is a traitorous conspiracy to take the lives of the designated persons "in aid of the existing armed rebellion." Second. That in the execution of the conspiracy, the actual murder of the late President, and the attempted murder of the Secretary of State, occurred. Throughout the charge and its specification, the conspiracy and its attempted execution are alleged to have been traitorous. The accusation, therefore, is not one merely of murder, but of murder designed and in part accomplished, with traitorous purpose. If the charge is true, and the intent (which is made a substantial part of it) be also true, then the crime is treason, and not simple murder. Treason against the United States, as defined by the Constitution, can "consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." (III Art.) This definition not only tells us what treason is, but tells us that no other crime than the defined one shall be considered the offense. And the same section provides that "no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or on confession in open court," and gives to Congress the power to declare what its punishment shall be. The offense in the general is the same in England. In that country, at no period since its freedom became settled, has any other treason been recognized. During the pendency of this rebellion (never before), it has been alleged that there exists with us the offense of military treason, punishable by the laws of war. It is so stated in the instructions of General Halleck to the then commanding officer in Tennessee, of the 5th of March, 1863. (Lawrence's Wheaton, Suppt., p. 41.) But Halleck confines it to acts committed against the army of a belligerent, when occupying the territory of the enemy. And he says what is certainly true, if such an offense can be committed, that it "is broadly distinguished from the treason defined in the constitutional and statutory laws, and made punishable by the civil courts." But the term "military

treason'' is not to be found in any English work or military order, or, before this rebellion, in any American authority.

It has evidently been adopted during the rebellion as a doctrine of military law on the authority of continental writers in governments less free than those of England and the United States, and in which, because they are less free, treason is made to consist of certain specific acts, and no others. But if Halleck is right, and all our prior practice, and that of England, from whom we derive ours, is to be abandoned, the cases before you are not cases of "military treason," as he defines it. When the offense here alleged is stated to have occurred in this district, the United States were not and did not claim to be in its occupation as a belligerent, nor was it pretended that the people of this district were, in a belligerent sense, enemies. On the contrary, they were citizens entitled to every right of citizenship. Nor were the parties on trial enemies. They were either citizens of the District, or of Maryland, and under the protection of the Constitution. The offense charged, then, being treason, it is treason as known to the Constitution and laws, and can only be tried and punished as they provide. To consider these parties belligerents, and their alleged offense military treason, is not only unwarranted by the authority of Halleck, but is in direct conflict with the Constitution and laws which the President and all of us are bound to support and defend. The offense, then, being treason, as known to the Constitution, its trial by a military court is clearly illegal. And this for obvious reasons. Under the Constitution no conviction of such an offense can be had, "unless on the testimony of two witnesses to the same overt act, or on confession in open court." And under the laws the parties are entitled to have "a copy of the indictment and a list of the jury and witnesses, with the names and places of abode of both, at least three entire days before the trial." They also have the right to challenge peremptorily thirty-five of the jury, and to challenge for cause without limitation. And finally, unless the indictment shall be found by a grand jury within three years next after the treason done or committed, they shall not be prosecuted, tried or punished. (Act 30th

April, 1790, 1 stat. at large, 118, 119.) Upon what possible ground, therefore, can this Commission possess the jurisdiction claimed for it? It is not alleged that it is subject to the provisions stated, and in its very nature it is impossible that it should be. The very safeguards designed by the Constitution, if it has such jurisdiction, are wholly unavailing. Trial by jury in all cases, our English ancestors deemed (as Story correctly tells us), "the great bulwark of their civil and political liberties, and watched with an increasing jealousy and solicitude." It constituted one of the fundamental articles of Magna Charta—"Nullus liber homo capiatur nec imprisonetur aut exulet, aut aliquo modo, destruatur, etc.; nisi per legae iudicium parium suorum, vel per legem terrea." This great right the American colonists brought with them as their birthright and inheritance. It landed with them at Jamestown and on the rock of Plymouth, and was equally prized by Cavalier and Puritan; and ever since, to the breaking out of the rebellion, has been enjoyed and esteemed the protection and proud privilege of their posterity. At times, during the rebellion, it has been disregarded and denied. The momentous nature of the crisis, brought about by that stupendous crime, involving, as it did, the very life of the nation, has caused the people to tolerate such disregard and denial. But the crisis, thank God, has passed. The authority of the Government throughout our territorial limits is reinstated so firmly that reflecting men, here and elsewhere, are convinced that the danger has passed never to return. The result proves that the principles on which the Government rests have imparted to it a vitality that will cause it to endure for all time, in spite of foreign invasion or domestic insurrection; and one of those principles—the choicest one—is the right in cases of "criminal prosecutions to a speedy and public trial by an impartial jury," and in cases of treason to the additional securities before adverted to. The great purpose of Magna Charta and the Constitution was (to quote Story again) "to guard against a spirit of oppression and tyranny on the part of rulers, and against a spirit of violence and vindictiveness on the part of the people." The appeal for safety

can, under such circumstances, scarcely be made by innocence in any other manner than by the severe control of courts of justice, and by the firm and impartial verdict of a jury sworn to do right, and guided solely by legal evidence and a sense of duty. In such a course there is a double security against the prejudice of judges, who may partake of the wishes and opinions of the Government, and against the passions of the multitude, who may demand their victim with a clamorous precipitancy." And Mr. Justice Blackstone, with the same deep sense of its value, meets the prediction of a foreign writer, "that because Rome, Sparta, and Carthage have lost their liberties, those of England in time must perish," by reminding him, "that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury." (3 Bla., 379.) That a right so valued, and esteemed by our fathers to be so necessary to civil liberty, so important to the very existence of a free government, was designed by them to be made to depend for its enjoyment upon the war power, or upon any power intrusted to any department of our Government, is a reflection on their intelligence and patriotism.

IV. But to proceed: The articles of war, if they provided for the punishment of the crimes on trial, and authorized such a court as this, do not include such parties as are now on trial. And, until the rebellion, I am not aware that a different construction was ever intimated. It is the exclusive fruit of the rebellion.

The title of the act is, "An act for establishing rules and articles for the government of the armies of the United States."

The first section states "the following shall be the rules and articles by which the armies of the United States shall be governed," and every other section, except the 56th and 57th, are, in word, confined to persons belonging to the army in some capacity or other. I understand it to be held by some, that because such words are not used in the two sections referred to, it was the design of Congress to include persons who do not belong to the army. In my judgment, this is a

wholly untenable construction; but if it was a correct one, it would not justify the use sought to be made of it in this instance. It would not bring these parties for their alleged crime before a military court known to the act; certainly not before a military commission—a court unknown to the act. The offense charged is a traitorous conspiracy, and murder committed in pursuance of it. Neither offense, conspiracy or murder, if indeed two are charged, is embraced by either the 56th or 57th articles of the statute. The 56th prohibits the relieving “the enemy with money, victuals or ammunition, or knowingly harboring and protecting him.” Sophistry itself cannot bring the offense in question, under this article. The 57th prohibits only the “holding correspondence with, or giving intelligence to the enemy, either directly or indirectly.” It is equally clear that the offenses in question are not within this provision. But, in fact, the two articles relied upon admit of no such construction as is understood to be claimed. This is thought to be obvious, not only from the general character of the act, and of all the other articles it contains, but because the one immediately preceding, like all those preceding, and succeeding it, other than the 56th and 57th, includes only persons belonging to the “armies of the United States.” Its language is “whosoever belonging to the armies of the United States, employed in foreign parts,” shall do the act prohibited, shall suffer the prescribed punishment. Now, it is a familiar rule of interpretation, perfectly well settled, in such a case, that unless there be something in the following sections that clearly shows a purpose to make them more comprehensive than their immediate predecessor, they are to be construed as subject to the same limitation. So far from there being in this instance, any evidence of a different purpose, the declared object of the statute, as evidenced by its title, its first section, and its general contents, are all inconsistent with any other construction. And when to this it is considered that the power exercised by Congress in passing the statute was merely the constitutional one to make rules for the government and regulation of the army, it is doing great injustice to that depart-

ment to suppose that in exercising it they designed to legislate for any other class. The words, therefore, in the 55th article, "belonging to the armies of the United States," qualifying the immediate preceding word, "whosoever," are applicable to the 56th and 57th, and equally qualify the same word "whosoever," also used in each of them. And, finally, upon this point I am supported by the authority of Lieutenant-General Scott. The Commission have seen from my previous reference to his autobiography that he placed his right to issue his martial law order, establishing, among other things, military commissions to try certain offenses in a foreign country, upon the ground that otherwise they would go unpunished, and his army become demoralized. One of these offenses was murder committed or attempted, and for such an offense he tells us that the articles of war provided no court for their trial and punishment, "no matter by whom or on whom committed." And this opinion is repeated in the 4th clause of his order, as true of all the designated offenses, "except in the very restricted case in the 9th of the article."

V. There are other views which I submit to the serious attention of the Commission.

I. The mode of proceeding in a court like this, and which has been pursued by the prosecution, with your approval, because deemed legal by both, is so inconsistent with the proceedings of civil courts, as regulated for ages by established law, that the fact, I think, demonstrates that persons not belonging to the army cannot be subjected to such a jurisdiction. 1. The character of the pleadings. The offense charged is a conspiracy with persons not within the reach of the Court, and some of them in a foreign country, to commit the alleged crime. To give you jurisdiction, the design of the accused and their co-conspirators is averred to have been to aid the rebellion, and to accomplish that end not only by the murder of the President and Lieutenant-General Grant, but of the Vice-President and Secretary of State. It is further averred that the President being murdered, the Vice-President becoming thereby President, and as such Commander-in-Chief, the purpose was to murder him; and as, in the con-

tingency of the death of both, it would be the duty of the Secretary of State to cause an election to be held for President and Vice-President, he was to be murdered in order to prevent a "lawful election" of these officers; and that by all these means, "aid and comfort" were to be given "the insurgents engaged in armed rebellion against the United States," and "the subversion and overthrow of the Constitution and laws of the United States" thereby effected. That such pleading as this would not be tolerated in a civil court, I suppose every lawyer will concede. It is argumentative, and even in that character unsound. The continuance of our Government does not depend on the lives of any or of all of its public servants. As fact, or law, therefore, the pleading is fatally defective. The Government has an inherent power to preserve itself, which no conspiracy to murder, or murder, can in the slightest degree impair. And the result which we have just witnessed proves this, and shows the folly of the madman and fiend by whose hands our late lamented President fell. He, doubtless, thought that he had done a deed that would subvert the "Constitution and laws." We know that it has not had even a tendency to that result. Not a power of the Government was suspended; all progressed as before the dire catastrophe. A cherished and almost idolized citizen was snatched from us by the assassin's arm, but there was no halt in the march of the Government. That continued in all its majesty wholly unimpeded. The only effect was to place the nation in tears, and drape it in mourning, and to awake the sympathy, and excite the indignation of the world.

II. But this mode of pleading renders, it would seem, inapplicable, the rules of evidence known to the civil courts. It justifies, in the opinion of the Judge Advocate and the Court (or what has been done would not have been done) a latitude that no civil court would allow as in the judgment of such a court the accused, however innocent, could not be supposed able to meet it. Proof has been received, not only of distinct offenses from those charged, but of such offenses committed by others than the parties on trial. Even in re-

gard to the party himself, other offenses alleged to have been previously committed by him cannot be proved. At one time a different practice prevailed in England, and does now, it is believed, in some of the Continental governments. But since the days of Lord Holt (a name venerated by lawyers and all admirers of enlightened jurisprudence), it has not prevailed in England. In the case of Harrison, tried before that judge for murder, the counsel for the Government offered a witness to prove some felonious design of the prisoner three years before. Holt indignantly exclaimed, "Hold! hold what are you doing now? How can he defend himself from charges of which he has no notice? And how many issues are to be raised to perplex me and the jury? Away! away! that ought not to be—that is nothing to the matter." 12 *St. Tr.*, 833-874. I refer to this case, not to assail what has been done in these cases contrary to this rule, because I am bound to infer that before such a commission as this the rule has no legal force. If, in a civil court, then, these parties would be entitled to the benefit of this rule, one never departed from in such courts, they would not have had proved against them crimes alleged to have been committed by others, and having no necessary or legal connection with those charged. With the same view, and not denying the right of the Commission in the particular case I am about to refer to, but to show that the Constitution could not have designed the subject citizens to the practice, I cite the same judge to prove that in a civil court those parties could not have been legally fettered during their trial. In the case of Cranbun, accused as implicated in the "assassination plot," on trial before the same judge, Holt put an end to what Lord Campbell terms "the revolting practice of trying prisoners in fetters." Hearing the clanking of chains, though no complaint was made to him, he said, "I should like to know why the prisoner is brought in ironed." "Let them be instantly knocked off. When prisoners are tried they should stand at their ease." (13 *State Trials*, 221, 2d Campbell, *Lives Chief Justices*, 140.) Finally, I deny the jurisdiction of the Commission, not only because neither Constitution or laws justify, but, on the contrary,

repudiate it, but on the ground that all the experience of the past is against it. Jefferson, ardent in the prosecution of Burr, and solicitous for his conviction, from a firm belief of his guilt, never suggested that he should be tried before any other than a civil court. And in that trial, so ably presided over by Marshall, the prisoner was allowed to "stand at his ease;" was granted every constitutional privilege, and no evidence was permitted to be given against him but such as a civil court recognizes; and in that case, as in this, the overthrow of the Government was the alleged purpose, and yet it was not intimated in any quarter that he could be tried by a military tribunal. In England, too, the doctrine on which this prosecution is placed is unknown. Attempts were made to assassinate George the Third and the present Queen, and Mr. Percival, then Prime Minister, was assassinated as he entered the House of Commons. In the first two instances, the design was to murder the commander-in-chief of England's army and navy, in whom, too, the whole war power of the Government was also vested; in the last, a secretary, clothed with powers as great, at least, as those that belong to our Secretary of State; and yet, in each, the parties accused were tried before a civil court, no one suggesting any other. And during the period of the French Revolution, when its principles, if principles they can be termed, were being inculcated in England to an extent that alarmed the Government, and caused it to exert every power it was thought to possess to frustrate their effect, when the writ of *habeas corpus* was suspended, and arrests and prosecutions resorted to almost without limit, no one suggested a trial, except in the civil courts. And yet the apprehension of the Government was, that the object of the alleged conspirators was to subvert its authority, bring about its overthrow, and subject the kingdom to the horrors of the French Revolution, then shocking the nations of the world. Hardy, Horne Tooke, and others, were tried by civil courts, and their names are remembered for the principles of freedom that were made triumphant mainly through the efforts of "that great genius," in the words of a modern English statesman (Earl Russell), "whose

sword and buckler protected justice and freedom during the disastrous period;" having "the tongue of Cicero and the soul of Hampden, an invincible orator and an undaunted patriot." (Erskine.)

As it was, these trials were conducted in so relentless a spirit, and, as it was thought, with such a disregard of the rights of the subject, that the administration of the day were not able to withstand the torrent of the people's indignation. What would have been their fate, individually as well as politically, if the cases had been tried before a military commission, and life taken? Can it be that in this particular an American citizen is not entitled to all the rights that belong to a British subject? Can it be that with us Executive power at times casts into the shade and renders all other power subordinate? An American statesman, with a world-wide reputation, long since gave answer to these inquiries. In a debate in the Senate of the United States, in which he assailed what he deemed an unwarranted assumption of Executive power, he said, "the first object of a free people is the preservation of their liberties, and liberty is only to be maintained by constitutional restraints and just divisions of political power." "It does not trust the amiable weaknesses of human nature, and, therefore, will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic intent come along with it." And he added, "Mr. President, the contest for ages has been to rescue liberty from the grasp of Executive power." "In the long list of the champions of human freedom there is not one name dimmed by the reproach of advocating the extension of Executive authority." Thoughts so eloquently expressed appeal with subduing power to every patriotic heart, and demonstrate that Webster, if here, would be heard raising his mighty voice against the jurisdiction of this Commission—a jurisdiction placed upon Executive authority alone. But it has been urged that martial law warrants such a commission, and that such law prevails here. The doctrine is believed to be alike indefensible and dangerous. It is not, however, necessary to inquire whether martial law, if it did pre-

vail, would maintain your jurisdiction, as it does not prevail. It has never been declared by any competent authority, and the civil courts we know are in the full and undisturbed exercise of all their functions. We learn, and the fact is doubtless true, that one of the parties, the very chief of the alleged conspiracy, has been indicted, and is about to be tried before one of those courts. If he, the alleged head and front of the conspiracy, is to be and can be so tried, upon what ground of right, of fairness, or of policy can the parties who are charged to have been his mere instruments be deprived of the same mode of trial? It may be said that in acting under this commission you are but conforming to an order of the President, which you are bound to obey. Let me examine this for a moment. If that order merely authorizes you to investigate the cases and report the facts to him and not to pronounce a judgment, and is to that extent legal, then it is because the President has the power himself, without such a proceeding, to punish the crime, and has only invoked your assistance to enable him to do it the more justly. Can this be so? Can it be that the life of a citizen, however humble, be he soldier or not, depends in any case on the mere will of the President? And yet it does, if the doctrine be sound. What more dangerous one can be imagined? Crime is defined by law, and is to be tried and punished under the law. What is murder, treason, or conspiracy, and what is admissible evidence to prove either, are all legal questions, and many of them, at times, difficult of correct solution. What the facts are may also present difficult inquiries. To pass upon the first, the Constitution provides courts consisting of judges selected for legal knowledge, and made independent of Executive power. Military judges are not so selected, and so far from being independent, are absolutely dependent on such power. To pass upon the latter, it provides juries as being not likely to "partake of the wishes and opinions of the Government." But if your function is only to act as aids to the President, to enable him to exercise his function of punishment, and as he is under no obligation by any law to call for such aid, he may punish upon his own unassisted judgment,

and without even the form of a trial. In conclusion, then, gentlemen, I submit that your responsibility, whatever that be, for error, in a proceeding like this, can find no protection in Presidential authority. Whatever it be, it grows out of the laws, and may, through the laws, be enforced. I suggested in the outset of these remarks that that responsibility in one contingency may be momentous. I recur to it again, disclaiming, as I did at first, the wish or hope that it would cause you to be wanting in a single particular of what you may believe to be your duty, but to obtain your best and most matured judgment. The wish and hope disclaimed would be alike idle and discourteous; and I trust the Commission will do me the justice to believe that I am incapable of falling into either fault.

Responsibility to personal danger can never alarm soldiers who have faced, and will ever be willing in their country's defense to face, death on the battle-field. But there is a responsibility that every gentleman, be he soldier or citizen, will constantly hold before him, and make him ponder—responsibility to the Constitution and laws of his country and an intelligent public opinion—and prevents his doing anything knowingly that can justly subject him to the censure of either. I have said that your responsibility is great. If the commission under which you act is void and confers no authority, whatever you may do may involve the most serious personal liability. Cases have occurred that prove this. It is sufficient to refer to one. Joseph Wall, at the time the offense charged against him was committed, was Governor and commander of the garrison of Goree, a dependency of England, in Africa. The indictment was for the murder of Benjamin Armstrong, and the trial was had in January, 1802, before a special court, consisting of Sir Archibald McDonald, Chief Baron of the Exchequer; Lawrence, of the King's Bench, and Locke, of the Common Pleas. The prosecution was conducted by Law, then Attorney General, afterward Lord Ellenborough. The crime was committed in 1782, and under a military order of the accused, and the sentence of a regimental court-martial. The defense relied upon was, that at the time

the garrison was in a state of mutiny, and that the deceased took a prominent part in it; that, because of the mutiny, the order for the court-martial was made, and that the punishment which was inflicted and said to have caused the death, was under its sentence. The offense was purely a military one, and belonged to the jurisdiction of a military court, if the facts relied upon by the accused were true, and its judgment constituted a valid defense. The court, however, charged the jury, that if they found that there was no mutiny to justify such a court-martial or its sentence, they were void, and furnished no defense whatever. The jury so finding, found the accused guilty, and he was soon after executed. (28 St. Tr. 51, 178.) The application of the principle of this case to the question I have considered is obvious. In that instance want of jurisdiction in the court-martial was held to be fatal to its judgment as a defense for the death that ensued under it. In this, if the Commission has no jurisdiction, its judgment for the same reason will be of no avail, either to Judges, Secretary of War, or President, if either shall be called to a responsibility for what may be done under it. Again, upon the point of jurisdiction, I beg leave to add that the opinion I have endeavored to maintain is believed to be the almost unanimous opinion of the profession, and certainly is of every judge or court who has expressed any.

In Maryland, where such commissions have been and are held, the Judge of the Criminal Court of Baltimore recently made it a matter of special charge to the grand jury. Judge Bond told them:

"It has come to my knowledge that here, where the United States Court, presided over by Chief Justice Chase, has always been unimpeded, and where the Marshal of the United States, appointed by the President, selects the jurors, irresponsible and unlawful military commissions attempt to exercise criminal jurisdiction over citizens of this State, not in the military or naval service of the United States, nor in the militia, who are charged with offenses either not known to the law, or with crimes for which the mode of trial and punishment are provided by statute in the courts of the land. That it is not done by the paramount authority of the United States, your attention is directed to article 5, of the Constitution of the United States, which says: 'No person shall be held to answer for a capital

or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger.' Such persons exercising such unlawful jurisdiction are liable to indictment by you, as well as responsible in civil actions to the parties."

In New York, Judge Peckham, of the Supreme Court of that State, and speaking for the whole bench, charged the grand jury as follows:

"The Constitution of the United States, Article 5, of the amendments, declares that 'no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger.' Article 6 declares that, 'in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.' Article 3, Section 2, declares that 'the trial of all crimes, except in cases of impeachment, shall be by jury,' etc.

These provisions were made for occasions of great excitement, no matter from what cause, when passion, rather than reason, might prevail. In ordinary times there would be no occasion for such guards, as there would be no disposition to depart from the usual and established modes of trial. A great crime has lately been committed that has shocked the civilized world. Every right-minded man desires the punishment of the criminals, but he desires that punishment to be administered according to law, and through the judicial tribunals of the country. No star-chamber court, no secret inquisition, in this nineteenth century, can ever be made acceptable to the American mind.

If none but the guilty could be accused, then no trial could be necessary—execution should follow accusation.

It is almost as necessary that the public should have undoubted faith in the purity of criminal justice, as it is that justice in fact be administered with integrity.

Grave doubts, to say the least, exist in the minds of intelligent men as to the constitutional right of the recent military commissions at Washington to sit in judgment upon the persons now on trial for their lives before that tribunal. Thoughtful men feel aggrieved that such a commission should be established in this free country, when the war is over, and when the common-law courts are open and accessible to administer justice, according to law, without fear or favor.

What remedy exists? None whatever, except through the power of public sentiment. As citizens of this free country, having an interest in its prosperity and good name, we may, as I desire to do, in all courtesy and kindness, and with all proper respect, express our disapprobation of this course in our rulers in Washington.

The unanimity with which the leading press of our land has condemned this mode of trial, ought to be gratifying to every patriot. Every citizen is interested in the preservation, in their purity, of the institutions of his country; and you, gentlemen, may make such presentment on this subject, if any, as your judgment may dictate."

The reputation of these judges is well and favorably known, and their authority is entitled to the greatest deference.

Even in France, during the consulship of Napoleon, the institution of a military commission for the trial of the Prince Duc d'Enghien, for alleged conspiracy against his life, was, to the irreparable injury of his reputation, ordered by Napoleon. The trial was had, and the Prince was at once convicted and executed. It brought upon Napoleon the condemnation of the world, and is one of the blackest spots in his character. The case of the Duke, says the eminent historian of the Consulate and the Empire, furnished Napoleon "a happy opportunity of saving his glory from a stain," which he lost, and adds, with philosophic truth, that it was "a deplorable consequence of violating the ordinary forms of justice," and further adds, "to defend social order by conforming to the strict rules and forms of justice, without allowing any feeling of revenge to operate, is the great lesson to be drawn from these tragical events." (Thiers' History, etc., 4 vol., 318, 322.)

Upon the whole, then, I think I shall not be considered obtrusive if I again invoke the Court to weigh well all that I have thought it my duty to urge upon them. I feel the duty to be upon me as a citizen sworn to do what I can to preserve the Constitution, and the principles on which it reposes. As counsel of one of the parties, I should esteem myself dishonored if I attempted to rescue my client from a proper trial for the offense charged against her, by denying the jurisdiction of the Commission, upon grounds that I did not conscientiously believe to be sound. And, in what I have done, I have not more had in view the defense of Mrs. Surratt, than of the Constitution and the laws. In my view, in this respect, her cause is the cause of every citizen. And let it not be

supposed that I am seeking to secure impunity to any one who may have been guilty of the horrid crimes of the night of the 14th of April. Over these the civil courts of this District have ample jurisdiction, and will faithfully exercise it if the cases are remitted to them, and guilt is legally established, and will surely award the punishment known to the laws. God forbid that such crimes should go unpunished! In the black catalogue of offenses, these will forever be esteemed the darkest and deepest ever committed by sinning man. And, in common with the civilized world, do I wish that every legal punishment may be legally inflicted upon all who participated in them.

A word more, gentlemen, and, thanking you for your kind attention, I shall have done. As you have discovered, I have not remarked on the evidence in the case of Mrs. Surratt, nor is it my purpose; but it is proper that I refer to her case, in particular, for a single moment. That a woman, well educated, and, as far as we can judge from all her past life, as we have it in evidence, a devout Christian, ever kind, affectionate and charitable, with no motive disclosed to us that could have caused a total change in her very nature, could have participated in the crimes in question it is almost impossible to believe. Such a belief can only be forced upon a reasonable, unsuspecting, unprejudiced mind, by direct and uncontradicted evidence, coming from pure and perfectly unsuspected sources. Have we these? Is the evidence uncontradicted? Are the two witnesses, Weichmann and Lloyd, pure and unsuspected? Of the particulars of their evidence I say nothing. They will be brought before you by my associates. But this conclusion in regard to these witnesses must be, in the minds of the Court, and is certainly strongly impressed upon my own, that, if the facts which they themselves state as to their connection and intimacy with Booth and Payne are true, their knowledge of the purpose to commit the crimes, and their participation in them, is much more satisfactorily established than the alleged knowledge and participation of Mrs. Surratt. As far, gentlemen, as I am concerned, her case is now in your hands.

MR. AIKEN, FOR THE DEFENSE.

Mr. Aiken. Mr. President and Gentlemen of the Commission: For the lawyer, as well as the soldier, there is an equally imperative command. That duty is to shelter from injustice and wrong the innocent, to protect the weak from oppression, and to rally at all times and on all occasions, when necessity demands it, to the special defense of those whom nature, custom, or circumstance may have placed in dependence upon our strength, honor and cherishing regard. That command emanates and reaches each class from the same authoritative and omnipotent source. It comes from a Superior, whose right to command none dare question, and none dare to disobey. In this command there is nothing of that *lex talionis* which nearly two thousand years ago nailed to the cross its Divine Author. "Therefore, all things whatsoever ye would that men should do to you, do ye even so unto them; for this is the law and the prophets."

God has not only given us life, but He has filled the world with everything to make life desirable; and when we sit down to determine the taking away of that which we did not give, and which, when once taken, we cannot restore, we consider a subject the most solemn and momentous within the range of human thought and human action.

Profoundly impressed with the innocence of our client, we enter upon this last duty in her case with the heartfelt prayer that her honorable judges may enjoy the satisfaction of not having a single doubt left on their minds in granting her an acquittal, either as to the testimony affecting her, or by the surrounding circumstances of the case.

The first point that naturally arises in the presentation of the defense of our client, is that which concerns the plea that has been made to the jurisdiction of this Commission to try her—a plea which by no means implies anything against the intelligence, fairness or integrity of the brilliant and distinguished officers who compose the court, but which merely touches the question of the right of this tribunal, under the authority by which it is convoked. This branch of her case

is left to depend upon the argument already submitted by her senior counsel, the *grande decus columnque* of his profession, and which is exhaustive of the subject on which it treats. Therefore, in proceeding to the discussion of the merits of the case against her, the jurisdiction of the Court, for the sake of argument, may be taken as conceded.

But, if it be granted that the jurisdiction is complete, the next preliminary inquiry naturally is as to the principles of evidence by which the great mass of accumulated facts is to be analyzed and weighed in the scales of justice and made to bias the minds of her judges; and it may be here laid down as a *concessum* in the case that we are here in this forum, constrained and concluded by the same process, in this regard, that would bind and control us in any other court of civil origin, having jurisdiction over a crime such as is here charged. For it is asserted in all the books that courts-martial must proceed, so far as the acceptance and the analysis of evidence is concerned, upon precisely those reasonable rules of evidence which time and experience, *ab antico*, surviving many ages of judicial wisdom, have unalterably fixed as unerring guides in the administration of the criminal law. Upon this conceded proposition it is unnecessary to consume time by the multiplication of references. We are content with two brief citations from works of acknowledged authority.

In Greenleaf it is laid down, "that courts-martial are bound, in general, to observe the rules of the law of evidence by which the courts of criminal jurisdiction are governed." (3 Greenleaf, Sec. 467.)

This covers all the great general principles of evidence, the points of difference being wholly as to minor matters.

And it is also affirmed in Benet, "that it has been laid down as an indisputable principle, that whenever a legislative act erects a new jurisdiction, without prescribing any particular rules of evidence to it, the common law will supply its own rules, from which it will not allow such newly-erected Court to depart. The rules of evidence, then, that obtain in the criminal courts of the country, must be the guides for the courts-martial; the end sought for being the

truth, these rules laid down for the attainment of that end, must be intrinsically the same in both cases. These rules constitute the law of evidence, and involve the quality, admissibility and effect of evidence and its application to the purposes of truth." (Benet, pp. 226, 227.)

Therefore, all the facts that tend against the accused, and all those that make for her, are to be weighed and are to operate upon her conviction or acquittal precisely as they would in a court of law. If they present a case such as would there convict her, she may be found guilty here; and if, on the other hand, the rules of law upon these facts would raise any presumption or create any doubt, or force any conclusions that would acquit her in a court of law, then she must be discharged, upon the same principles, by this Commission. This is a point which, in our judgment, we cannot too strongly impress upon the minds of her judges. The extraordinary character of the crime; the assassination that removed from us the President of the United States, makes it most desirable that the findings of this tribunal shall be so well founded in reason as to satisfy and secure public confidence and approval; for many of the most material objects of this prosecution, and some of the most important ends of justice, will be defeated and frustrated if convictions or acquittals, and more especially the former, shall be adjudged upon grounds that are notoriously insufficient.

Such a course of action would have a tendency to draw sympathy and support to the parties thus adjudged guilty, and would rob the result of this investigation of the wholesome support of professional and public opinion. The jurisdiction of the Commission, for example, is a matter that has already provoked considerable criticism and much warm disapproval; but in the case of persons clearly found to be guilty, the public mind would easily overlook any doubts that might exist as to the regularity of the Court in the just sentence that would overtake acknowledged criminals. Thus, if Booth himself and a party of men clearly proved, by ocular evidence or confession, to have aided him, were here tried and condemned, and, as a consequence, executed, not much stress, we

think, would be laid by many upon the irregularity of the mode by which they should reach that just death which all good citizens would affirm to be their deserts. But the case is far different when it affects persons who are only suspected, or against whom the evidence is weak and imperfect; for if citizens may be arraigned and convicted for so grievous an offense as this upon insufficient evidence, every one will feel his own personal safety involved, and the tendency would be to intensify public feeling against the whole process of the trial. It would be felt and argued that they had been condemned upon evidence that would not have convicted them in a civil court, and that they had been deprived, therefore, of the advantages which they would have had for their defense. Reproach and contumely upon the Government would be the natural result, and the first occasion would arise in all our history for such demonstrations as would be sure to follow the condemnation of mere citizens, and particularly of a woman, upon evidence on which an acquittal would follow in a civil court. It is, therefore, not only a matter of the highest concern to the accused themselves as a question of personal and private right, but also of great importance upon considerations of general public utility and policy, that the results of this trial, as affecting each of the accused, among them Mrs. Surratt, shall be rigidly held within the bounds and limitations that would control in the premises, if the parties were on trial in a civil court upon an indictment equivalent to the charges and specifications here. Conceding, as we have said, the jurisdiction for the purposes of this branch of the argument, we hold to the principle first enunciated as the one great, all-important and controlling rule that is to guide the Commission in the findings they are now about to make. In order to apply this principle to the case of our client, we do not propose to range through the general rules of evidence with a view to seeing how they square with the facts as proven against her. In the examination of the evidence in detail, many of these must from necessity be briefly alluded to; but there is only one of them to which we propose in this place to advert specifically, and that is the principle

that may be justly said to lie at the foundation of all the criminal law—a principle so just, that it seems to have sprung from the brain of Wisdom herself, and so undoubted and universal as to stand upon the recognition of all the times and all the mighty intellects through and by which the common law has been built up. We allude, of course, to that principle which declares that “every man is held to be innocent until he shall be proven guilty”—a principle so natural that it has fastened itself upon the common reason of mankind, and been immemorially adopted as a cardinal doctrine in all courts of justice worthy of the name. It is by reason of this great, underlying legal tenet that we are in possession of the rule of law, administered by all of the courts, which, in mere technical expression, may be termed “the presumption of innocence in favor of the accused.” And it is from hence that we derive that further application of the general principle, which has also become a rule of law and of universal application wherever the common law is respected (and with which we have more particularly to deal), by which it is affirmed, in common language, that in any prosecution for crime “the accused must be acquitted where there is a reasonable doubt of his guilt.” We hardly think it necessary to adduce authorities for this position before any tribunal. In a civil court we certainly should waive the citations, for the principle as stated would be assumed by any civil judge, and would, indeed, be the starting point for any investigation whatever. Though a maxim so common and conceded, it is fortified by the authority of all the great lights of the law. Before reference, however, is made to them, we wish to impress upon the minds of the Court another and important rule which we shall have occasion to refer to:

“The evidence in support of a conspiracy is generally circumstantial.” (Russell on Crimes, Vol. 2, Sec. 698.)

In regard to circumstantial evidence, all the best and ablest writers, ancient and modern, agree in treating it as wholly inferior in cogency, force and effect to direct evidence. And now for the rule which must guide the jury in all cases of reasonable doubt: “If evidence leave reasonable ground for doubt, the conclusion cannot be morally certain, however great may be the preponderance of probability in its favor.” (Wills on Circumstantial Evidence.)

"The burden of proof in every criminal case is on the Government to prove all the material allegations in the indictment; and if, on the whole evidence, the jury have a reasonable doubt whether the defendant is guilty of the crime charged, they are bound to acquit him. If the evidence leads to a reasonable doubt, that doubt will avail in favor of the prisoner." (1st Greenleaf, Sec. 34.)

"The evidence must establish the truth of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it." (Commonwealth v. Webster, 5 Cush. 320.)

Far back in the early history of English jurisprudence we find that it was considered a most serious abuse of the common law "that justices and their officers, who kill people by false judgment, be not destroyed as other murderers, which King Alfred caused to be done, who caused forty-four justices in one year to be hanged for their false judgment. He hanged Freburne because he judged Harpin to die, whereas the jury were in doubt of their verdict; for in doubtful cases we ought rather to save than to condemn."

The spirit of the Roman law partook of the same care and caution in the condemnation of those charged with crime. The maxim was: "*Satius est, impunitum relinqui fecinus nocentis, quam innocentem damnare.*"

That there may be no mistake concerning the fact that this Commission is bound as a jury by these rules, the same as juries in civil courts, we again quote from Benet:

"It is in the province of the Court (Court-martial) to decide all questions on the admissibility of evidence. Whether there is any evidence is a question for the Court as judges, but whether the evidence is sufficient is a question for the Court as jury to determine, and this rule applies to the admissibility of every kind of evidence, written as well as oral." (Benet, pp. 225, 226.)

These citations may be indefinitely multiplied, for this principle is as true in the law as any physical fact in the exact sciences. It is not contended, indeed, that any degree of doubt is sufficient to acquit, but the doubt must be of a reasonable nature, so as to upset the moral evidence of guilt; a mere possibility of innocence will not suffice, for, upon human testimony, no case is free from possible innocence.

Even the most direct evidence of crime may possibly be mistaken. But the doubt required by the law must be so consonant with reason as, in analogous circumstances, would affect the action of a reasonable creature concerning his own affairs. We may make the nature of such a doubt clearer to the Court by alluding to a very common rule in the application of the general principle in certain cases, and the rule will readily appeal to the judgment of the Court as a remarkable and singularly beautiful example of the inexorable logic with which the law applies its own unfailing reason.

Thus, in cases of conspiracy, and some others, where many persons are charged with joint crime, and where the evidence against most of them must, of necessity, be circumstantial, the plea of "reasonable doubt" becomes peculiarly valuable to the separate accused, and the mode in which it is held it can best be applied is the test whether the facts as proved, circumstantial, as supposed, can be made to consist just as reasonably with a theory that is essentially different from the theory of guilt.

If, therefore, in the development of the whole facts of a conspiracy, all the particular facts against a particular person can be taken apart and shown to support a reasonable theory that excludes the theory of guilt, it cannot be denied that the moral proof of the latter is so shaken as to admit the rule concerning the presumption of innocence. For surely no man should be made to suffer because certain facts are proved against him, which are consistent with guilt, when it can be shown that they are also, and more reasonably, consistent with innocence. And, as touching the conspiracy here charged, we suppose there are hundreds of innocent persons, acquaintances of the actual assassin, against whom, on the social rule of "*noscitur a sociis*," mercifully set aside in law, many facts might be elicited that would corroborate a suspicion of participation in his crime; but it would be monstrous that they should suffer from that theory when the same facts are rationally explainable on other theories.

The distinguished Assistant Judge Advocate, Mr.ingham, who has brought to the aid of the prosecution, in this

trial, such ready and trenchant astuteness in the law, has laid the following down as an invariable rule, and it will pass into the books as such :

"A party who conspires to do a crime may approach the most upright man in the world, with whom he had been, before the criminality was known to the world, on terms of intimacy, and whose position in the world was such that he might be on terms of intimacy with reputable gentlemen. It is the misfortune of a man that is approached in that way; it is not his crime, and it is not colorably his crime either."

This rule of construction, we humbly submit, in connection with the question of doubt, has a direct and most weighty bearing upon the case of our client. Some indication of the mode in which we propose to apply it may be properly stated here. Now, in all the evidence, there is not a shadow of direct and positive proof which connects Mrs. Surratt with a participation in this conspiracy alleged, or with any knowledge of it. Indeed, considering the active part she is charged with taking, and the natural communicativeness of her sex, the case is most singularly and wonderfully barren of even circumstantial facts concerning her. But all there is, is circumstantial. Nothing is proved against her, except some few detached facts and circumstances, lying around the outer circle of the alleged conspiracy, and by no means necessarily connected with guilty intent or guilty knowledge.

It becomes our duty to see:

1. What these facts are.
2. The character of the evidence in support of them, and of the witnesses by whom they are said to be proven. And,
3. Whether they are consistent with a reasonable theory by which guilt is excluded.

We assume, of course, as a matter that does not require argument, that she has committed no crime at all, even if these facts be proved, unless there is the necessary express or implied criminal intent, for guilty knowledge and guilty intent are the constituent elements, the principles of all crime. The intent and malice, too, in her case must be express, for the facts proved against her, taken in themselves, are entirely

and perfectly innocent, and are not such as give rise to a necessary implication of malice. This will not be denied. Thus, when one commits a violent homicide, the law will presume the requisite malice; but when one only delivers a message, which is an innocent act in itself, the guilty knowledge, malice and intent, that are absolutely necessary to make it criminal, must be expressly proven before any criminal consequences can attach to it. And, to quote, "Knowledge and intent, when material, must be shown by the prosecutor." (Wharton's American Criminal Law, Sec. 631.) The intent to do a criminal act, as defined by Bouvier, implies and means a preconceived purpose and resolve, and determination to commit the crime alleged. To quote again; "But the intent or guilty knowledge must be brought directly home to the defendant." (Wharton's American Criminal Law, Sec. 635.) When an act, in itself indifferent, becomes criminal, if done with a particular intent, then the intent must be proved and found." (3 Greenleaf, Sec. 13.)

In the light of these principles, let us examine the evidence as it affects Mrs. Surratt. 1. What are the acts she has done? The specification against her, in the general charge, is as follows:

"And in further prosecution of the said conspiracy, Mary E. Surratt did, at Washington City, and within the military department and military lines aforesaid, on or before the 6th day of March, A. D. 1865, and on divers other days and times between that day and the 20th day of April, A. D. 1865, receive, entertain, harbor and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O'Laughlin, George A. Atzerodt, Samuel Arnold, and their confederates, with knowledge of the murderous and traitorous conspiracy aforesaid, and with intent to aid, abet and assist them in the execution thereof, and in escaping from justice after the murder of the said Abraham Lincoln, as aforesaid."

The first striking fact proved is her acquaintance with J. Wilkes Booth—that he was an occasional visitor at her house. From the evidence, if it is to be relied on, it distinctly appears that this acquaintance commenced the latter part of last January, in the vicinage of three months only before the assassi-

nation of the President, and, with slight interruptions, it was continued down to the day of the assassination of the President. Whether he was first invited to the house and introduced to the family by Weichmann, John H. Surratt, or some other person, the evidence does not disclose. When asked by the Judge Advocate "whom did he call to see?" the witness, Weichmann, responded, "He generally called for Mr. Surratt—John H. Surratt—and, in the absence of John H. Surratt, he would call for Mrs. Surratt."

Before calling the attention of the Commission to the next evidence of importance against Mrs. Surratt, we desire to refresh the recollection of the Court as to the time and manner, and by whom, according to the testimony of Lloyd, the carbines were first brought to his (Lloyd's) house.

From the official record the following is taken:

Some five or six weeks before the assassination John H. Surratt, Herold and Atzerodt were together at my house. They drove up there in the morning. All three of them, when they came into the barroom, drank, and then John Surratt called me into the front parlor, and on the sofa were two carbines with ammunition, a rope and also a monkey wrench. Surratt asked me to take care of them, to conceal the carbines. I told him there was no place to conceal them. He then carried me into a room above the storeroom. He showed me where I could put them, underneath the joists of the house. At his directions I put them in there. I stated to Colonel Wells, through mistake, that Surratt put them there; but I put them in there myself. He said he just wanted them to stay for a few days and he would call for them.

It also appears in evidence against Mrs. Surratt, if the testimony is to be relied on, that on the Tuesday previous to the murder of the President, the 11th of April, she met John M. Lloyd at Uniontown, when the following took place:

When she first broached the subject did not know what she had reference to; then she came out plainer and asked me about the "shooting irons." Told her that they were hid away far back—that I was afraid the house would be searched, and they were shoved far back. She told me to get them out ready; they would be wanted soon.

On the afternoon of the 14th of April, at about half-past five, Lloyd again met Mrs. Surratt at Surrattsville, at which

time, according to his version, she met him by the wood pile, near the house, and told him to have those shooting irons ready that night, there would be some parties calling for them, and that she gave him something wrapped in a piece of paper, and asked him to get two bottles of whisky ready also. This message to Mr. Lloyd is the second item of importance against Mrs. Surratt, and in support of the specification against her. The third and last fact that makes against her in the minds of the Court, is the one narrated by Major H. W. Smith, a witness for the prosecution, who states that while at the house of Mrs. Surratt, on the night of the 17th of April, assisting in making the arrest of its inmates, the prisoner, Payne, came in. He (Smith) stepped to the door of the parlor and said: "Mrs. Surratt, will you step here a minute?" As Mrs. Surratt came forward, he asked her the question, "Do you know this man?" She replied, quoting the witness' language, "Before God, sir, I do not know this man, and I have never seen him." An addition to this is found in the testimony of the same witness, as he was drawn out by the Judge Advocate. The witness repeats the language of Mrs. Surratt, "Before God, I do not know this man, and have never seen him, and did not hire him to dig a gutter for me." The fact of the photographs and card of the State arms of Virginia have ceased to be of the slightest importance, since the explanations given in evidence concerning them, and need not be alluded to. If there is any doubt as to whom they all belonged, reference to the testimony of Misses Surratt and Fitzpatrick will settle it.

These three circumstances constitute the part played by the accused, Mary E. Surratt, in this great conspiracy. They are the acts she has done. They are all that two months of patient and unwearying investigation, and the most thorough search for evidence that was probably ever made, has been able to develop against her. The acquaintance with Booth, the message to Lloyd, the non-recognition of Payne, constitute the sum total of her receiving, entertaining, harboring and concealing, aiding and assisting those named as conspirators and their confederates, with knowledge of the

murderous and traitorous conspiracy, and with intent to aid, abet and assist them in the execution thereof, and in escaping from justice. The acts she has done, in and of themselves, are perfectly innocent. Of themselves they constitute no crime. They are what you or I, or any of us might have done. She received and entertained Booth, the assassin, and so did a hundred others. She may have delivered a message to Lloyd—so have a hundred others. She might have said she did not know Payne—and who within the sound of my voice can say that they know him now? They are ordinary and commonplace transactions, such as occur every day and to almost everybody. But as all the case against her must consist in the guilty intent that will be attempted to be connected with these facts, we now propose to show that they are not so clearly proven as to free them from great doubt, and, therefore, we will inquire.

2d. How are these acts proven? Solely by the testimony of Louis J. Weichmann and John M. Lloyd. Here let us state that we have no malice toward either of them, but if in the analysis of their evidence we should seem to be severe, it is that error and duplicity may be exposed, and innocence protected.

We may start out with the proposition that a body of men, banded together for the consummation of an unlawful act against the Government, naturally would not disclose their purpose and hold suspicious consultations concerning it in the presence continually of an innocent party. In the light of this fair presumption, let us look at the acts of Weichmann, as disclosed by his own testimony. Perhaps the most singular and astonishing fact that is made to appear is his omnipresence and co-action with those declared to be conspirators, and his professed and declared knowledge of all their plans and purposes. His acquaintance with John H. Surratt commenced in the fall of 1859, at St. Charles College, Maryland. In January, 1863, he renewed his acquaintance with him in this city. On the 1st of November, 1864, he took board and lodgings with Mrs. Surratt, at her house, No. 541 H street,

in this city. If this testimony be correct, he was introduced to Booth on the 15th day of January, 1865. At this first, very first meeting, he was invited to Booth's room, at the National, where he drank wine and took cigars at Booth's expense. After consultation about something in an outer passage between Booth and the party alleged to be with him by Weichmann, they all came into the room, and for the first time business was proceeded with in his presence. After that he met Booth in Mrs. Surratt's parlor and in his own room, and had conversations with him. As near as Weichmann recollects, about three weeks after his introduction, he met the prisoner, Atzerodt, at Mrs. Surratt's. (How Atzerodt was received at the house will be referred to.) About the time that Booth played Pescara, in the "Apostate," at Ford's theater, Weichmann attended the theater in company with Surratt and Atzerodt. At the theater they were joined by Herold, John T. Holahan, a gentleman not suspected of complicity in the great tragedy, also joined the company at the theater. After the play was over, Surratt, Holahan and himself went as far as the corner of Tenth and E streets, when Surratt, noticing that Atzerodt and Herold were not with them, sent Weichmann back for them. He found them in a restaurant near by, in conversation with Booth, by whose invitation Weichmann took a drink. After that the entire party went to Kloman's, on Seventh street, and had some oysters. The party there separated, Surratt, Weichmann and Holahan going home. In the month of March last the prisoner, Payne, according to Weichmann, went to Mrs. Surratt's house and inquired for John H. Surratt. "I myself," says Weichmann, "went to open the door, and he inquired for Mr. Surratt. I told him Mr. Surratt was not at home, but I would introduce him to the family, and did introduce him to Mrs. Surratt—under the name of Wood." What more? By Weichmann's request Payne remained in the house all night. He had supper served to him in the privacy of Weichmann's own room. More than that, Weichmann went down into the kitchen and got the supper and carried it up to him himself, and as nearly as he recollects, it was about eight weeks previous to the assassina-

tion. Payne remained as Weichmann's guest until the next morning, when he left in the early train for Baltimore. About three weeks after that Payne called again. Says Weichmann, "I again went to the door, and I again ushered him into the parlor;" but says he had forgotten his name, and only recollected that he had given the name of Wood on the former visit, when one of the ladies called Payne by that name. He who had served supper to Payne in his own room, and had spent a night with him, could not recollect for three weeks the common name of "Wood," but recollects with such distinctness and particularity scenes and incidents of much greater age, and by which he is jeopardizing the lives of others. Payne remained that time about three days, representing himself to the family as a Baptist preacher; that he had been in prison in Baltimore about a week, and that he had taken the oath of allegiance and was going to become a good loyal citizen. To Mrs. Surratt this seemed eccentric, and she said "he was a great looking Baptist preacher." "They looked upon it as odd, and laughed at it." It seems from Weichmann's testimony that he again shared his room with Payne, and when returning from his office one day, and finding a false mustache on the table in his room, he took it and threw it into his toilet box, and afterward with a box of paints, in his trunk, and the mustache was subsequently found in Weichmann's baggage. When Payne, according to Weichmann's testimony, inquired, "Where is my mustache?" Weichmann said nothing, but "thought it rather queer that a Baptist preacher should wear a mustache." He says he did not want it about his room; "thought no honest person had any reason to wear a false mustache," and as no "honest person" (?) should be in possession of it, he locked it up in his own trunk. Weichmann professes throughout his testimony the greatest regard and friendship for Mrs. Surratt and her son. Why did he not, on this occasion, and while his suspicions were aroused—if he is an honest man, why did he not go to Mrs. Surratt and communicate them at once? She, an innocent and guileless woman, not knowing what was occurring in her own house; he, the friend, coming into possession

of important facts, and not making them known to her, the head of the household, but claiming now, since this overwhelming misfortune has fallen upon Mrs. Surratt, that, while reposing in the very bosom of the family as a friend and confidant, he was a spy and an informer! and that, we believe, is the best excuse the prosecution is able to make for him. His account and explanation of this mustache would be treated with contemptuous ridicule in a civil court.

But this is not all. Concede Weichmann's account of the mustache to be true, and if it was not enough to rouse his suspicions that all was not right, he states that, on the same day, he went to Surratt's room and found Payne seated on the bed with Surratt, playing with bowie knives, and surrounded with revolvers and spurs. Miss Honora Fitzpatrick testifies that Weichmann was treated by Mrs. Surratt "more like a son than a friend." Poor return for motherly care! Guilty knowledge of and participation in crime or in wild schemes for the capture of the President, would be a good excuse for not making all this known to Mrs. Surratt. In speaking of the spurs and pistols, Weichmann knew that there were just eight spurs, and two long navy revolvers. Bear in mind, we ask you, gentlemen of the Commission, that there is no evidence before you showing that Mrs. Surratt knew anything about these things. It seems farther on, about the 19th of March, that Weichmann went to the Herndon House with Surratt to engage a room. He says he afterward learned that it was for Payne, from Atzerodt, but contradicts himself in the same breath by stating that he inquired of Atzerodt if he was going to see Payne at the Herndon House. His intimate knowledge of Surratt's movements between Richmond and Washington, fixing the dates of the trips with great exactitude; of Surratt's bringing gold back; of Surratt's leaving on the evening of the 3d of April for Canada, spending his last moments here with Weichmann; of Surratt's telling Weichmann about his interviews with Davis and Benjamin in all this knowledge concerning himself, and associations with those named as conspirators, he is no doubt truthful as far as his statements extend, but when he comes

to apply some of this knowledge to others, he at once shakes all faith in his testimony bearing upon the accused.

"Do you remember," the question was asked him, "early in the month of April, of Mrs. Surratt having sent for you and asking you to give Mr. Booth notice that she wished to see him?"

Weichmann in his reply stated that she did; that it was on the 2d of April, and that he found in Mr. Booth's room John McCullough, the actor, when he delivered the message. One of two things to which he swears in this statement cannot be true: 1. That he met John McCullough in Booth's room, for we have McCullough's sworn statement that at that time he was not in the city of Washington, and if, when he delivered the message to Booth, McCullough was in the room, it could not have been on the 2d of April.

"St. Lawrence Hall, Montreal, June 3, 1865.

"I am an actor by profession, at present fulfilling an engagement at Mr. Buckland's theater, in this city. I arrived here on the 12th of May. I performed two engagements at Ford's theater, in Washington, during the past winter, the last one closing on Saturday evening, 25th of March. I left Washington on Sunday evening, 26th March, and have not been there since. I have no recollection of meeting any person by the name of Weichmann.

"John McCullough.

"Sworn to and subscribed before me, at the United States Consulate General's in Montreal, this third day of June, A. D. 1865.

"C. H. Powers, U. S. Vice Consul General."

If he can be so mistaken about those facts, may he not be in regard to the whole transaction? It is also proved by Weichmann that before Mrs. Surratt started for the country, on the 14th of April, Booth called; that he remained three or four minutes, and then Weichmann and Mrs. Surratt started for the country.

All this comes out on his first examination in chief. The following is also told in his first cross-examination: Mrs. Surratt keeps a boarding house in this city, and was in the habit of renting her rooms out, and that he was upon very intimate terms with Surratt; that they occupied the same

room; that when he and Mrs. Surratt went to Surrattsville on the 14th, she took two packages, one of papers, the contents of the other were not known. That persons have been in the habit of going to Mrs. Surratt's and staying a day or two; that Atzerodt stopped in the house only one night; that the first time Payne came to the house he was dressed genteelly, like a gentleman; that he heard both Mrs. Surratt and her daughter say that they did not care about having Atzerodt brought to the house; and at the conclusion, in swearing as to Mrs. Surratt's character, he said it was exemplary and lady-like in every particular, and apparently, as far as he could judge, she was all the time, from the 1st of November up to the 14th of April, "doing her duties to God and man." It also distinctly appears that Weichmann never had any conversation with Mrs. Surratt touching any conspiracy. One thing is apparent to our minds, and it is forced upon us, as it must be upon every reasonable mind, that in order to have gained all this knowledge Weichmann must have been within the inner circle of the conspiracy. He knows too much for an innocent man, and the conclusion is perfectly irresistible that if Mrs. Surratt had knowledge of what was going on, and had been, with others, a *particeps criminis* in the great conspiracy, she would have certainly done more than she did or has been shown against her, and Weichmann would have known it. How does her non-recognition of Payne, her acquaintance with Booth, and the delivery of the message to Lloyd, compare with the long and startling array of facts proved against Weichmann out of his own mouth? All the facts point strongly to him as a co-conspirator.

Is there a word on record of conversation between Booth and Mrs. Surratt? That they did converse together, we know; but if anything treasonable had passed between them, would not the quick ears of Weichmann have caught it, and would not he have recited it to this Court?

When Weichmann went, on Tuesday, the 11th of April, to get Booth's buggy, he was not asked by Mrs. Surratt to get ten dollars. It was proffered by Booth, according to Weichmann, and he took it. If Mrs. Surratt ever got any

money from Booth, she paid it back to him. It is not her character to be in any one's debt.

There was no intimacy with Booth, as Mrs. Surratt has proved, but only common acquaintance, and such as would warrant only occasional calls on Booth's part, and only intimacy would have excused Mrs. Surratt to herself in accepting such a favor, had it been made known to her. Moreover, Miss Surratt has attested to remarks of her brother, which prove that intimacy of Booth with his sister and mother were not desirable to him.

The preceding facts are proven by statements made by Weichmann during his first examination. But, as though the Commission had not sufficiently exposed the character of one of its chief witnesses in the role of grand conspirator, Weichmann is recalled and farther attests to the genuineness of the following telegram:

"New York, March 23d, 1865.—To Weichmann, Esq., 541 H street: Tell John telegraph number and street at once."

(Signed) "J. Booth."

What additional proof of confidential relations between Weichmann and Booth could the Court desire? If there was a conspiracy planned and maintained among the persons named in the indictment, Weichmann must have had entire knowledge of the same, else he had not been admitted to that degree of knowledge to which he testifies; and in such case, and in the alleged case of Mrs. Surratt's complicity, Weichmann must have known the same by circumstances strong enough to exclude doubt, and in comparison with which all present facts of accusation would sink into insignificance.

We proceed to the notice and review of the second chief witness of the prosecution against Mrs. Surratt, John M. Lloyd. He testifies to the fact of a meeting with Mrs. Surratt at Uniontown on the 11th of April, 1865, and to a conversation having occurred between Mrs. Surratt and himself, in regard to which he states:

"I am quite positive she asked me about the 'shooting irons;' I am quite positive about that, but not altogether positive; I think

she named shooting irons, or something to call my attention to those things, for I had almost forgotten about their being there." Q. "Was her question to you first, whether they were there, or what was it?" A. "Really, I cannot recollect the first question she put to me—I could not do it to save my life." The question was asked Lloyd, "During this conversation, was the word carbine mentioned?" He answered, "No." "She finally came out, but cannot be determined about it—that she said shooting irons—asked me in relation to them." The question was then asked: "Can you swear, on your oath, that Mrs. Surratt mentioned the words 'shooting irons' to you at all?" A. "I am very positive she did." Q. "Are you certain?" A. "I am very positive that she named shooting irons on both occasions. Not so positive as to the first as I am about the last."

Here comes in the plea of "reasonable doubt." If the witness himself is not absolutely positive as to what occurred, and as to the conversation that took place, how can the jury assume to act upon it as they would upon a matter personally concerning themselves?

On this occasion of Mrs. Surratt's visit to Uniontown, three days before the assassination, where she met Lloyd, and where this conversation occurred between them, at a time when Lloyd was, by presumption, sober and not intoxicated, he declares definitely before the Commission that he is unable to recollect the conversation, nor parts of it, with distinctness. But on the 14th of April, and at a time when, as testified by his sister-in-law, he was more than ordinarily affected by intoxicating drink—and Capt. Gwynn, James Lusby, Knott, barkeeper, and others, corroborate the testimony as to his absolute inebriation—he attests that he positively remembers that Mrs. Surratt said to him: "Mr. Lloyd, I want you to have those shooting irons ready." "That persons would call for them." "That was the language she made use of, and she gave me this other thing to give to whoever called."

In connection with the fact that Lloyd cannot swear positively that Mrs. Surratt mentioned "shooting irons" to him at Uniontown, bear in mind the fact that Weichmann sat in the buggy on the same seat with Mrs. Surratt, and he swears he heard nothing about "shooting irons." Would not the quick ears of Weichmann have heard the remark had it been made?

The gentlemen of the Commission will please recollect that these statements were rendered by a man addicted to excessive use of intoxicating liquors; that he was even inordinately drunk at the time referred to; that he had voluntarily complicated himself in the concealment of the arms by J. H. Surratt and his friends; that he was in a state of maudlin terror when arrested, and when forced to confess, that for two days he maintained denial of all knowledge that Booth and Herold had been at his house; and that at last, and in the condition referred to, he was coerced by threats to confess, and in a weak and common effort to exculpate himself by the accusation of another, he proceeded to place blame upon Mrs. Surratt by statements of conversation already cited. Notwithstanding his utter denial of all knowledge of Booth and Herold having called at his house, it afterward appears, by his own testimony, that immediately Herold commanded him (Lloyd) "for God's sake, make haste and get those things," he comprehended what "things" were indicated, without definition, and brought forth both carbines and whisky. He testifies that J. H. Surratt had told him, when depositing the weapons in concealment in his house, that they would soon be called for, but did not instruct him, it seems, by whom they would be demanded.

All facts connecting Lloyd with the case tend to his implication and guilt, and to prove that he adopted the *dernier resort* of guilt—accusation and inculpation of another. In case Lloyd were innocent and Mrs. Surratt the guilty coadjutrix and messenger of the conspirators, Lloyd would have been able to cite so much more open and significant remarks and acts of Mrs. Surratt that he would not have been obliged to recall, in all perversion and weakness of uncertainty, so common and unmeaning deeds and speech as his testimony includes.

It is upon these considerations that we feel ourselves safe and reasonable in the position that there are facts and circumstances, both external and internal, connected with the testimony of Weichmann and Lloyd, which, if they do not destroy, do certainly greatly shake their credibility, and which,

under the rule that will give Mrs. Surratt the benefit of all reasonable doubts, seem to forbid that she should be convicted upon the unsupported evidence of these two witnesses. But even admitting the facts to be proven as above recited, it remains to be seen where is the guilty knowledge of the contemplated assassination; and this brings us to the inquiry whether these facts are not explainable so as to exclude guilt.

From one of the most respected of legal authorities the following is taken: "Whenever, therefore, the evidence leaves it indifferent which of several hypotheses is true, or merely establishes some finite probability in favor of one hypothesis rather than another, such evidence cannot amount to proof. The maxim of the law is that it is better that ninety-nine offenders should escape than that one innocent man should be condemned." (Starkie on Evidence.)

The acts of Mrs. Surratt must have been accompanied with a criminal intent in order to make them criminal. If any one supposes that such intent existed, the supposition comes alone from inference. If disloyal acts and constant disloyal practices; if overt and open action against the Government on her part had been shown down to the day of the murder of the President, it would do something toward establishing the inference of criminal intent. On the other hand, just the reverse is shown. The remarks here of the learned and honorable Judge Advocate are peculiarly appropriate to this branch of the discussion, and, with his authority, we waive all others:

"If the Court please, I will make a single remark. I think the testimony in this case has proved, what I believe history sufficiently attests, how kindred to each other are the crimes of treason against a nation and the assassination of its Chief Magistrate. I think of those crimes, the one seems to be, if not the necessary consequence, certainly a logical sequence from the other. The murder of the President of the United States, as alleged and shown, was pre-eminently a political assassination. Disloyalty to the Government was its sole, its only inspiration. When, therefore, we shall show, on the part of the accused, acts of intense disloyalty, bearing arms in the field against that Government, we show, with him, the presence of an animus toward the Government which relieves this accusation of much, if not all, of its improbability. And this course of proof is constantly resorted to in criminal courts. I do not

regard it as in the slightest degree a departure from the usages of the profession in the administration of public justice. The purpose is to show that the prisoner, in his mind and course of life, was prepared for the commission of this crime; that the tendencies of his life, as evidenced by open and overt acts, lead and point to this crime, if not as a necessary, certainly as a most probable result, and it is with that view, and that only, that the testimony is offered."

Is there anything in Mrs. Surratt's mind and course of life to show that she was prepared for the commission of this crime? The business transacted by Mrs. Surratt at Surrattsville, on the 14th, clearly discloses her only purpose in making the visit. Calvert's letters, the package of papers relating to the estate, the business with Nothe, would be sufficiently clear to most minds, when added to the fact that the other unknown package had been handed to Mrs. Offutt; that, while at Surrattsville, she made no inquiry for, or allusion to, Mr. Lloyd, and was ready to return to Washington when Lloyd drove up to the house. Does not this open wide the door for the admission of the plea of "reasonable doubt?" Had she really been engaged in assisting in the great crime, which makes an epoch in our country's history, her only object and most anxious wish would have been to see Lloyd. It was no ruse to transact important business there to cover up what the uncharitable would call the real business. Calvert's letter was received by her on the forenoon of the 14th, and long before she saw Booth that day, or even before Booth knew that the President would be at the theater that night, Mrs. Surratt had disclosed her intention to go to Surrattsville, and had she been one moment earlier in her start, she would not have seen Booth at all. All these things furnish powerful presumptions in favor of the theory that, if she delivered the message at all, it was done innocently.

In regard to the non-recognition of Payne, the third fact adduced by the prosecution against Mrs. Surratt, we incline to the opinion that, to all minds not forejudging, the testimony of Miss A. E. Surratt, and various friends and servants of Mrs. Surratt, relative to physical causes, might fully explain and account for such ocular remissness and failure. In times and on occasions of casual meeting of intimate ac-

quaintances on the street, and of common need for domestic uses, the eyesight of Mrs. Surratt had proved treacherous and failing. How much more liable to fail her was her imperfect vision on an occasion of excitement and anxiety, like the night of her arrest and the disturbance of her household by military officers, and when the person with whom she was confronted was transfigured by a disguise which varied from the one in which she had previously met him, with all the wide difference between a Baptist parson and an earth-soiled, uncouthly dressed digger of gutters? Anna E. Surratt, Emma Offutt, Eliza Holahan, Honora Fitzpatrick, Anna Ward and a servant attest all to the visual incapacity of Mrs. Surratt, and the annoyance she experienced therefrom, in passing friends without recognition in the daytime, and from inability to sew or read even on a dark day, as well as at night. The priests of her church, and gentlemen who have been friendly and neighborhood acquaintances of Mrs. Surratt for many years, bear witness to her untarnished name and discreet and Christian character, and absence of all imputation of disloyalty, to her character for patriotism. Friends and servants attest to her voluntary and gratuitous beneficence to our soldiers stationed near here; and, "in charges for high treason, it is pertinent to inquire into the humanity of the prisoner toward those representing the Government" is the maxim of the law; and, in addition, we invite your attention to the singular fact that of the two officers who bore testimony in this matter, one asserts that the hall, wherein Payne sat, was illuminated by a full head of gas; the other that the gaslight was purposely dimmed. The uncertainty of the witness, who gave testimony relative to the coat of Payne, may also be recalled to your notice.

Should not this valuable testimony of loyal and moral character shield a woman from ready belief, on the part of judges who judge her worthiness in every way, that within the few, few moments in which Booth detained Mrs. Surratt from her carriage, already waiting, when he approached and entered the house, she became so converted to diabolical evil as to hail with ready assistance his terrible plot, which must have

been framed (if it were complete in his intent at that hour, half-past two o'clock) since the hour of eleven that day?

If any part of Lloyd's statements is true, and Mrs. Surratt did verily bear to his or Mrs. Offutt's hands the field-glass, enveloped in paper, by the evidence itself, we may believe she knew not the nature of the contents of the package; and, had she known, what evil could she, or any other, have attached to a commission of so common a nature? No evidence of individual or personal intimacy with Booth has been adduced against Mrs. Surratt; no long and apparently confidential interviews; no indications of a private comprehension mutual between them; only the natural, and not frequent, custom on the part of Booth—as any other associate of her son might and doubtless did do—of inquiring through the mother, whom he would request to see, of the son who, he would learn, was absent from home. No one had been found who could declare any appearance of the nursing or mysteriously discussing of anything like conspiracy within the walls of Mrs. Surratt's house. Even if the son of Mrs. Surratt, from the significancies of associations, is to be classed with the conspirators, if such body existed, it is monstrous to suppose that the son would weave a net of circumstantial evidences around the dwelling of his widowed mother, were he never so reckless and sin-determined; and that they (the mother and the son) joined hands in such dreadful pact, is more monstrous still to be thought.

A mother and son associate in crime! And such a crime as this half of the civilized world never saw matched, in all its dreadful bearings! Our judgments can have hardly recovered their unprejudiced poise since the shock of the late horrors, if we can contemplate with credulity such a picture, conjured by the unjust spirits of indiscriminate accusation and revenge. A crime which, in its public magnitude, added to its private misery, would have driven even the Atis-haunted heart of a Medici, a Borgia, or a Madame Bocarme to wild confession before its accomplishment, and daunted even that soul, of all the recorded world the most eager for novelty in license, and most unshrinking in sin—the indurated soul of

Christina of Sweden; such a crime as profoundest plotters within padded walls would scarcely dare whisper; the words forming the expression of which, spoken aloud in the upper air, would convert all listening boughs to aspens, and all glad sounds of nature to shuddering walls. And this made known, even surmised, to a woman! a *mater familias*, the good genius, the "*placens uxor*" of a home where children had gathered all the influences of purity and the reminiscences of innocence, where religion watched, and the church was minister and teacher.

Who—were circumstantial evidence strong and conclusive, such as only time and the slow weaving fates could elucidate and deny—who will believe, when the mists of uncertainty which cloud the present shall have dissolved, that a woman born and bred in respectability and competence—a Christian mother, and a citizen who never offended the laws of civil propriety; whose unfailing attention to the most sacred duties of life has won for her the name of "a proper Christian matron;" whose heart was ever warmed by charity; whose door unbarred to the poor, and whose Penates had never cause to veil their faces—who will believe that she could so suddenly and so fully have learned the intricate arts of sin? A daughter of the South, her life associations confirming her natal predilections, her individual preferences inclined, without logic or question, to the Southern people, but with no consciousness nor intent of disloyalty to her Government, and causing no exclusion from her friendship and active favors of the people of the loyal North, nor repugnance in the distribution among our Union soldiery of all needed comforts within her command, and on all occasions.

A strong but guileless-hearted woman, her material solicitude would have been the first denouncer, even abrupt betrayer, of a plotted crime in which one companion of her son could have been implicated, had cognizance of such reached her. Her days would have been agonized and her nights sleepless, till she might have exposed and counteracted that spirit of defiant hate which watched its moment of vantage to wreak an immortal wrong—till she might have sought the

intercession and absolution of the church, her refuge, in behalf of those she loved. The brains, which were bold, and crafty, and couchant enough to dare the world's opprobrium in the conception of a scheme which held as naught the lives of men in highest places, never imparted it to the intelligence, nor sought the aid nor sympathy of any living woman, who had not, like Lady Macbeth, "unsexed herself"—not though she were wise and discreet as Maria Theresa or the Castilian Isabella. This woman knew it not. This woman who, on the morning preceding that blackest day in our country's annals, knelt in the performance of her most sincere and sacred duty at the confessional, and received the mystic rite of the Eucharist, knew it not. Not only would she have rejected it with horror, but such proposition, presented by the guest who had sat at her hearth as the friend and convive of her son, upon whose arm and integrity her widowed womanhood relied for solace and protection, would have roused her maternal wits to some sure cunning which would have contravened the crime and sheltered her son from the evil influences and miserable results of such companionship.

The mothers of Charles the IX and of Nero could harbor, underneath their terrible smiles, schemes for the violent and unshriven deaths or the moral violation and decadence which would painfully and gradually remove lives sprung from their own, were they obstacles to their demoniac ambition. But they wrought their awful romances of crime in lands where the sun of supreme civilization, through a gorgeous evening of Syberitish luxury, was sinking, with red tints of revolution, into the night of anarchy and national caducity. In our own young nation, strong in its morality, energy, freedom and simplicity, assassination can never be indigenous. Even among the desperadoes and imported lazzaroni of our largest cities it is comparatively an infrequent cause of fear.

The daughters of women to whom, in their yet preserved abodes, the noble mothers who adorned the days of our early independence, are vividly remembered realities and not haunting shades—the descendants of earnest seekers for liberty,

civil and religious, of rare races, grown great in heroic endurance, in purity which comes of trial borne, and in hope even of conscious right, whom the wheels of fortune sent hither to transmit such virtues—the descendants of those have no heart, no ear for the diabolisms born in hotbeds of tyranny and intolerance. No descendants of these, no woman of this temperate land could have seen, much less joined her son, descending the sanguinary and irrepassable paths of treason and murder, to ignominious death, or an expatriated and attainted life, worse than the punishing wheel and bloody pool of the poets' hell.

In our country where reason and moderation so easily quench the fires of insane hate, and where "*La Vendetta*" is so easily overcome by the sublime grace of forgiveness, no woman could have been found so desperate as to sacrifice all spiritual, temporal and social good, self, offspring, fame, honor and all the *desiderata* of life and time and immortality to the commission or even countenance, of such a deed of horror as we have been compelled to contemplate the past two months.

In a Christian land, where all records and results of the world's intellectual, civil and moral advancement mold the human heart and mind to highest impulses the theory of old Helvetius is more probable than desirable.

The natures of all born in equal station are not so widely varied as to present extremes of vice and goodness, but by the effects of rarest and severest experience. Beautiful fairies and terrible gnomes do not stand by each infant's cradle, sowing the nascent mind with tenderest graces or vilest errors. The slow attrition of vicious associations and law-defying indulgences, or the sudden impetus of some terribly multiplied and social disaster, must have worn away the susceptibility of conscience, and self-respect or dashed the mind from the height of these down to the depths of despair and recklessness, before one of ordinary life could take counsel with violence and crime. In no such manner was the life of our client marked. It was the parallel of nearly all the competent masses; surrounded by the scenes of her earliest rec-

ollections, independent in her condition, she was satisfied with the *mundus* of her daily pursuits, and the maintenance of her own and children's *status* in society and her church.

Remember your wives, mothers and sisters, gentle friends, whose graces, purity and careful affection ornament and cherish and strengthen your lives. Not widely different from their natures and spheres have been the nature and sphere of the woman who sits in the prisoner's dock today, mourning with the heart of Alcestis her children and her lot; by whose desolated hearthstone a solitary daughter wastes her un comforted life away in tears and prayers and vigils for the dawn of hope; and this wretchedness and uplifted despair have closed like a shadow around one of earth's common pictures of domestic peace and social comfort by the one sole cause—suspicion—fastened and fed upon the facts of acquaintance and mere fortuitous intercourse with that man in whose name so many miseries gather, the assassinator of the President.

Since the days when Christian tuition first elevated womanhood to her present free, refined and refining position, man's power and honoring regard have been the palladium of her sex.

Let no strain of injustice, eager for a sacrifice to revenge, rest upon the reputation of the men of our country and time.

This woman, who widowed of her natural protectors; who in helplessness and painfully severe imprisonment, in sickness and in grief ineffable, sues for justice and mercy from your hands, may leave a legacy of blessings, sweet as fruition hastening showers for those you love and care for, in return for the happiness of fame and home restored, though life be abbreviated and darkened through this world, by the miseries of this unmerited and woeful trial. But long and chilling is the shade which just retribution, slow creeping on with its "*pede claudo*," casts around the fate of him whose heart is merciless to his fellows bowed low in misfortune and exigence.

Let all the fair womanhood of our land hail you with a pæan of joy that you have restored to her sex, in all its ranks,

the ægis of impregnable legal justice which circumvallates and sanctifies the threshold of home and the privacy of home life against the rude irruptions of arbitrary and perhaps malice-born suspicion, with its fearful attendants of arrest and incarceration, which in this case have been sufficient to induce sickness of soul and body.

Let not this first State tribunal in our country's history, which involves a woman's name, be blazoned before all the world with the harsh tints of intolerance, which permits injustice. But as the benignant heart and kindly judging mind of the world-lamented victim of a crime which wound, in its ramifications of woe, around so many fates, would himself have counseled you, let the heralds of peace and charity, with their wool-bound staves, follow the fasces and axes of judgment and law and without the sacrifice of any innocent Iphigenia, let the ship of State launch with dignity of unstained sails into the unruffled sea of Union and Prosperity.

THE TRIAL OF MICHAEL O'LAUGHLIN FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

Michael O'Laughlin,¹ John H. Surratt, Atzerodt and Arnold were all supposed to be interested with Booth in an oil speculation; but this was in fact simply an excuse to explain their frequent meetings with him at the National Hotel in Washington and other places. O'Laughlin lived in Baltimore, but he lodged for several weeks in February, 1865, at Mrs. Van Tine's house in Washington. Samuel Arnold was also a lodger there and Booth came very often to see them. O'Laughlin and Arnold did not stay much in their own room and were sometimes out all night.²

After O'Laughlin went back to Baltimore, i. e., on March 27, Booth sent a telegram in these words to him from Washington: "Get word to Sam. Come on, with or without him, Wednesday morning. We sell that day sure. Don't fail."³

On April 13, the day before the assassination, O'Laughlin, in company with three companions, arrived in Washington from Baltimore about five in the afternoon. From the depot they sauntered up Pennsylvania avenue, went the rounds of

¹ "The parents of Michael O'Laughlin lived in Baltimore for thirty years preceding the assassination. Michael went there from the South during the war, and on the 16th of June, 1863, took the oath of allegiance in the office of Marshal James M. McPhail at Baltimore. He had been in the Confederate army previous to taking the oath. He was a schoolmate of J. Wilkes Booth, and his family lived in property owned by Booth's mother. He was a small, delicate-looking man, with rather pleasing features, uneasy black eyes, bushy black hair, a heavy black mustache and imperial and a most anxious expression of countenance, shaded by a sad, remorseful look." Oldroyd, p. 49.

² Mary Van Tine, p. 314.

³ Edward C. Stewart, p. 315.

the various saloons and stopped all night at the Metropolitan Hotel.⁴ These companions, on the trial, tried to prove that O'Laughlin was with them until two o'clock on the morning of the 14th, when they registered and retired at the Metropolitan Hotel.⁵ James B. Henderson, one of the party, said that O'Laughlin was not out of his sight after their arrival until they retired that night, except for a few minutes. He also said that O'Laughlin went to the hotel the next morning to see Booth.⁶

The City of Washington was illuminated on the evening of the 13th to celebrate the Union victories. The public buildings were a blaze of light and bands of music were stationed at various places. The President's mansion and the War and Navy departments were especially brilliant. After the illumination at the War Department was over, a band of music and a large crowd proceeded to the residence of Secretary Stanton⁷ and serenaded him and also General Grant, who was present. About half-past ten one of the family saw O'Laughlin pass in the door of the Secretary's house and take a position on one side of the hall. He asked O'Laughlin what his business was, who inquired where the Secretary was, and was told that he was standing on the steps. He remained there some minutes when he was requested to go out, which he did.⁸ O'Laughlin could see General Grant in the brilliantly lighted parlors from where he stood in the hall. While the band was playing in front of the house, General and Mrs. Grant, Secretary Stanton and other guests appeared upon the front steps, as the crowd was calling for General Grant. Major Kilburn Knox was one of the party and as he walked down to the lower step O'Laughlin said to him, "Is Stanton in?" The Major said, "I suppose

⁴ Bernard T. Early, pp. 315, 319.

⁵ Bernard T. Early, pp. 315, 319.

⁶ James B. Henderson, pp. 316, 320.

⁷ STANTON, DAVID McMASTERS. (1814-1869.) Born Steubenville, Ohio; admitted to bar and became reporter of decisions of Supreme Court; practiced in Pittsburgh and removed to Washington in 1857; Attorney General, 1860; Secretary of War, 1862-1867; Associate Justice Supreme Court, 1869. Died at Washington.

⁸ David Stanton, p. 316.

you mean the Secretary?" "Yes," he said, "I am a lawyer in town and know him very well."⁹ Another officer was standing on the steps listening to the music, when O'Laughlin approached him and asked if General Grant was in, saying he wished to see him, but was told that this was no occasion to see him; that if he remained in front of the house he could see him when he came out.¹⁰

One of the men who came to Washington with O'Laughlin testified that on Friday morning about nine o'clock they had breakfast at a restaurant on Pennsylvania avenue and then they walked up the avenue. When passing the National Hotel, O'Laughlin stopped, went in and up to Booth's room. His companions waited for him three-quarters of an hour, and as he did not come out, they went away without him, but O'Laughlin joined them later. The party spent the day of the assassination in drinking pretty freely and visiting places of resort.¹¹ O'Laughlin was at another hotel at eleven o'clock Friday night and went out a few minutes later with a friend who took him to the Franklin House, where they remained all night, and where they heard the news of the assassination of the President.¹² On Saturday afternoon the whole party returned to Baltimore on the three o'clock train. Upon their arrival and while going to his home, O'Laughlin met his brother-in-law, who told him that some parties had been there that morning looking for him. O'Laughlin went into the house to see his mother, but only remained with her a few minutes, when he came out and said to Mr. Early, "I will not stay here all night for fear I will be arrested. If I am, it will kill my mother." He went to the house of a friend, where he was arrested on Monday, the 17th. Asked why he was there instead of at his boarding place, he said that when he arrived in town on Saturday he was told that the officers had been looking for him and that he went away to a friend of his on Saturday and Sunday. When he was arrested he

⁹ Major Kilburn Knox, p. 37.

¹⁰ John C. Hatter, p. 318.

¹¹ Bernard T. Early, pp. 315, 319.

¹² John H. Fuller, p. 322.

seemed to know what it was for and did not ask any questions about it.¹³

The theory of the Government was that both Secretary Stanton and General Grant were to be assassinated on Friday night; that O'Laughlin was simply looking over the ground on Thursday and that for some reason not discovered the attempt on the lives of these two distinguished men was abandoned.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,¹⁴ President.¹⁵

May 13.

The charge against *Michael O'Laughlin* was that he was a member of the general conspiracy and did also lie in wait for Ulysses S. Grant, then Lieutenant General and Commander of the armies of the United States with intent to kill and murder him.¹⁶ Having pleaded *not guilty*¹⁷ the taking of the testimony began today.

Judge Advocate General *Holt*¹⁸ and Assistant Judge Advocate *Bingham*¹⁹ and *Burnett*,²⁰ for the Government.

Walter S. Cox,²¹ for the prisoner.

THE TESTIMONY FOR THE PROSECUTION.

Wm. Wallace. On 17th April arrested prisoner, O'Laughlin, at the house of a family named Bailey on High street, Baltimore. Asked him why he was there instead of at his boarding house; he said that when he arrived in town on Saturday he

was told that the officers had been looking for him, and that he went away to a friend of his on Saturday and Sunday night. When arrested, he seemed to understand what it was for, and did not ask any questions.

O'Laughlin said that when he

¹³ William Wallace, p. 313.

¹⁴ See *ante*, p. 34.

¹⁵ For the other members of the court, see p. 33.

¹⁶ See *ante*, p. 40.

¹⁷ See *ante*, p. 40.

¹⁸ See *ante*, p. 35.

¹⁹ See *ante*, p. 35.

²⁰ See *ante*, p. 36.

²¹ See *ante*, p. 42.

got to his brother-in-law's house on Saturday afternoon he heard that the detectives had been there. He said he knew nothing of the assassination whatever, and could account for his whereabouts during all the time of his stay in Washington.

James M. McPhail. Michael O'Laughlin, the prisoner, came into our lines about the time of the battles of Antietam and South Mountain, about September, 1863. He stated to me that he had taken the oath of allegiance at Martinsburg. Found in the records of my office this morning the oath of allegiance of one Michael O'Laughlin, dated Baltimore, June 16, 1863, and signed Michael O'Laughlin. Only know of O'Laughlin being in the rebel service from his own declarations.

Mrs. Mary Van Tine. Reside at No. 420 D street, this city, and keep rooms to rent. I see two gentlemen here (pointing to O'Laughlin and Arnold) who had rooms at my house. Think it was the 10th February last they came. John Wilkes Booth came very often to see O'Laughlin and Arnold, but did not, as a general thing, remain very long. Was told by Arnold, when I inquired, that the gentleman's name was John Wilkes Booth. Sometimes Booth would call when they were out; sometimes he called two or three times before they returned. He generally appeared very anxious for their return. Sometimes, when he found them out, he requested that if they returned before he called again that they would come to the stable. Sometimes left a note, going into their room to write it. Think he more fre-

quently inquired for O'Laughlin. The only arms I ever saw in their rooms was a pistol.

The last time Booth played here, about 20th March last, when he played Pescara, I expressed a desire to see him, and Mr. O'Laughlin gave me complimentary tickets.

A man used sometimes to call to see them and I think he passed one night with them. Never heard his name. He was not what you would call a gentleman in appearance, but a very respectable-looking mechanic. His skin was hardened like that of a man who had been exposed to the weather, and he had sandy whiskers. Do not see him among the prisoners.

Arnold and O'Laughlin said they were in the oil business, but did not say that they were connected with Booth in it. Letters occasionally came for them, but not a great many. They left my house about the 20th March.

Cross-examined. When they left, understood they were going to Pennsylvania. Nothing was said by them about having abandoned the oil business. They did not stay a great deal in their room, and they were sometimes out all night. Mr. Booth was a constant visitor. Never heard any of their conversations.

Billy Williams (colored). I know prisoner, Mr. O'Laughlin, and Mr. Arnold by sight. In March last was going by Barnum's Hotel, when Mr. J. Wilkes Booth, the actor, came down the steps and asked me if I would take two letters for him. He told me there was one for O'Laughlin, and the other he said I was to take to the number that was on it. Did not tell me who

it was for. A colored fellow was with me, as I could not read writing. Told me one was for Mr. O'Laughlin and the other was for Arnold. Took one to Mr. O'Laughlin at the Baltimore Theater; one I carried to Mr. Arnold. Gave it to a lady who was at the door, and she said she would send it up to him. Saw O'Laughlin at the theater, and gave him his letter there.

John Hapman. Have seen that dispatch before. It reads:

Washington, March 13, 1864.

To M. O'Laughlin, Esq.,

No. 57 North Exeter Street,
Baltimore, Md.

Don't fear to neglect your business. You had better come at once.

J. Booth.

It was sent by telegraph from this city to O'Laughlin, March 13, 1865. We used the old printed forms of the year before, which accounts for the date being 1864; knew J. Wilkes Booth and saw him write that message.

Edward C. Stewart. Am a telegraph operator at the Metropolitan Hotel in this city.

Sent this dispatch myself over the wires to Baltimore:

Washington, March 27, 1864.

To M. O'Laughlin, Esq.,

57 North Exeter Street,
Baltimore, Md.

Get word to Sam. Come on, with or without him, Wednesday morning. We sell that day sure. Don't fail.

J. Wilkes Booth.

Did not know the man who gave it to me; he wrote it and asked me to send it; think I should know him if I were to see his photograph.

(Photograph of Booth shown to witness.)

That is the gentleman who sent

it. The true date of the telegram is March 27, 1865.

Samuel Streett. Have known the prisoner, Michael O'Laughlin, from his youth. About 1st April last, I saw him in this city, conversing with John Wilkes Booth. They were conferring together in a confidential manner on the stoop of a house, on the right-hand side of the avenue going toward the Treasury Department. There were three of them in company; Booth appeared to be the speaker of the party, and the third person was an attentive listener.

O'Laughlin called me to one side, and told me that Booth was busily engaged with his friend, or was talking privately. They were conversing in a low tone. The third party, as near as I remember, had curly hair; he had on a slouch hat, and seemed to be in a stooping position, as though talking to Booth in a low tone, or attentively listening to Booth's conversation. (Looking at prisoners.) Can not swear that the man is here.

Bernard T. Early. Am acquainted with prisoner, O'Laughlin, and slightly with Arnold; came down to this city from Baltimore on the Thursday before the assassination—the night of the illumination—with Mr. O'Laughlin; there were four of us in company. Mr. Arnold was not, to my knowledge, on the cars. When we arrived in this city, O'Laughlin asked me to walk with him as far as the National Hotel. He did not take a room there; do not know that he made inquiries for Booth at the desk, nor did I see him associating with Booth. We stopped that night at the Metropolitan

Hotel. On Friday was with O'Laughlin the greater part of the day. When we got up, we went down and took breakfast at Welch's (Welcker's) on the avenue. After that, all four of us came up the avenue in company. When passing the National Hotel about 9 o'clock, I think, I stopped to go back to the water closet. When I came out, Mr. Henderson, one of the company, was sitting down. As I was going out, he called me back, and told me to wait for O'Laughlin, who was gone up stairs to see Booth. Waited about three-quarters of an hour, but as he did not come down, we went out without him. In about an hour after that, when we were at a restaurant on the avenue, between Third and Four-and-a-half streets, O'Laughlin came in.

O'Laughlin, Henderson and myself had supper at Welch's, and the last time I saw O'Laughlin that night was at a restaurant, going out with Mr. Fuller. It was pretty late, but whether it was before or after the assassination can not say. O'Laughlin had been there for supper. We had been drinking considerably. The name of the present proprietor of the restaurant, I believe, is Lichau; think, though, I would not be certain, that O'Laughlin remained there until after the assassination.

O'Laughlin returned to Baltimore with me next day, Saturday, by the 3 o'clock afternoon train. After we arrived in Baltimore, on going down to his house, we met his brother-in-law. He told Mr. O'Laughlin that there had been parties there that morning looking for him.

O'Laughlin went into the house, and asked me if I would remain there for awhile.

He went up stairs to see his mother. On returning he said he would not stay at home that night. The remark he made was, that he would not like to be arrested in the house; that it would be the death of his mother. I told O'Laughlin that I thought it best for him to stay at home until the parties who were looking for him came again; but he said no, it would be the death of his mother if he was taken in the house.

James B. Henderson. Am acquainted with prisoner, Mr. O'Laughlin. I saw him in this city on Thursday and Friday, 13th, 14th of April. I do not know whether he visited J. Wilkes Booth on either of those days, but he told me on Friday that he was to see him that morning.

David Stanton. I saw Michael O'Laughlin on the 13th April, the night before the assassination, at the house of the Secretary of War; saw him pass in the door, and take a position on one side of the hall; asked him what his business was, and he asked me where the Secretary was, and I told him he was standing on the steps. He said nothing further, but remained there some minutes, until finally I requested him to go out. He followed me out as far as the gate on the left-hand side of the house, and that was the last I saw of him. He did not ask for any one else beside the Secretary, nor did he explain why he was there; first I supposed he was intoxicated, but found out,

after having some conversation with him, that he was not.

General Grant was in the parlor. He and the Secretary were being serenaded. O'Laughlin could see General Grant from his position. He did not inquire for any one but the Secretary, and after I pointed him out he did not go to him, and did not tell me what his business was; did not see him go away from the house; there was such a crowd there. That was about half-past 10 o'clock.

Cross-examined. That was the first time I ever saw this man; did not see him again until I saw him on the Monitor as a prisoner, on the day on which Booth's body was taken away from the vessel. He was dressed in a suit of black; dress-coat, vest and pants, and his hat, which was a black slouch hat, I think, he had in his hand. The hall was very well lit up; the parlor, where General Grant was sitting, was also lit up, and I was directly in front of him when I addressed him.

Thought the man was intoxicated, from the way he came into the house; inquired, before I went to him, of different members of the family, if they knew him. Finding they did not know him, I addressed him, and requested him to go out, which he did, going after me. There were a good many people about. The Secretary of War and Major Knox were on the doorsteps, and this man had got behind them. He had the same moustache and beard that he has now.

Major Kilburn Knox. Was at the house of the Secretary of War on the evening of 13th April, and saw there a man

whom I recognize among the prisoners. There he is (pointing to O'Laughlin). Left the War Department at 10 o'clock, after the illumination there was over, and walked up to the Secretary's house. There was a band playing at the house, and on the steps were General Grant, Mrs. Grant, the Secretary, General Barnes and his wife, Mr. Knapp and his wife, Miss Lucy Stanton, and two or three small children; was standing on the upper steps, talking to Mrs. Grant and the General. Some fireworks were being set off in the square opposite. This man (O'Laughlin) came up to me and said, Is Stanton in? Said I, I suppose you mean the Secretary? He said, Yes. He made the remark, I am a lawyer in town; I know him very well; was under the impression he was under the influence of liquor; told him I did not think he could see him then, and he walked to the other side of the steps, and stood there probably five minutes; still stayed there for about five minutes, and walked over to me and said, Is Mr. Stanton in? and then said, Excuse me, I thought you were the officer on duty here. Said I, There is no officer on duty here. He walked inside of the hall, the alcove, and stood on the inside step; saw him standing there. I walked over to Mr. David Stanton and said, Do you know that man? He said he did not. I said to him, He says he knows the Secretary very well, but he is under the influence of liquor, and you had better bring him out. Mr. David Stanton talked to him a few moments, and then took him down the steps. I did not notice him

again. He did not say anything about General Grant. By that time the General had gone into the parlor.

Think the Secretary stood on the steps outside, and this man stood behind the Secretary, and from where he stood he could see into the parlor. In that position he could have looked into the parlor, and seen who was in there, through the door. The whole house was lighted up; feel certain that prisoner, O'Laughlin, is the man I saw.

Cross-examined. Do not recollect whether it was moonlight or dark that evening. There was a great crowd round the Secretary's house, and close up to the steps; did not notice the man until he walked up on the steps and spoke to me, and after he went out again I saw him no more. He had on a black slouch hat, a black frock coat, and black pants; as to his vest I can not say; had never seen the man before; have seen him once since in this prison.

John C. Hatter. I recognize that man (pointing to prisoner, O'Laughlin). He is the man I saw at Secretary Stanton's house at 9 o'clock on the night of the illumination, 13th of April.

Was standing on the steps looking at the illumination, and this man approached me, and asked me if General Grant was in; told him he was. He said he wished to see him. Said I, This is no occasion for you to see him. If you wish to see him, step out on the pavement, or on the stone where the carriage stops, and you can see him. He did not attempt to go into the house; he left the steps and walked away toward the tree-box, talking as

he went. I did not understand what he was saying. He seemed to reflect over something, and came back; then he walked off; did not see him any more. The house was illuminated, and it was pretty light outside.

Cross-examined. Am a sergeant in the Adjutant-General's service at the War Department, on duty at the Secretary's room. Had never seen the man before that evening; next time I saw him was last Sunday week, in prison.

The first time I saw him it was very light, and he had on a dark suit of clothes, with a heavy moustache, black, and an imperial.

He wore a dark slouch hat, a little low, and dark dress-coat and dark pantaloons; should judge him to be about five feet four or five inches. There was a crowd about the house, come to serenade the Secretary; four or five bands were there. The Secretary was in the parlor with General Grant; they had not come out then; there was nobody on the steps but me.

Marcus P. Norton. From 10th January until the 10th March, was stopping at the National Hotel in this city. I knew J. Wilkes Booth, having seen him several times at the theater; saw the prisoners, George A. Atzerodt and Michael O'Laughlin, at the National Hotel prior to the inauguration of President Lincoln in company with Booth; saw Atzerodt twice, and O'Laughlin four or five times in conversation with him.

Marcus P. Norton, see also p. 142.

Eaton G. Horner, see p. 325.

THE DEFENSE.

Bernard J. Early (recalled). We left Baltimore on Thursday, 13th of April, half-past 3 o'clock and arrived here about half-past 5. Stopped at several places, and went into the Metropolitan Hotel, between 1 and 2 o'clock; went out again for about five minutes, and returned at about 2, when we went up stairs to bed. Mr. O'Laughlin was with us all that night.

On Friday night, O'Laughlin was in Rullman's Hotel from about supper time until he went out with Mr. Fuller. We had supper at Welch's about 8 o'clock, and we stayed there from about three-quarters of an hour to an hour. From Welch's we went to Rullman's. Whether Mr. O'Laughlin went out with Mr. Fuller before or after the assassination can not say.

O'Laughlin had on a dahlia coat—something of a frock—a double-breasted vest, and pantaloons of the same material—a Scotch plaid, purple and green; made these things for him.

Cross-examined. Friday evening, about 11, we were all under the influence of liquor. We might have drank as many as ten times, mostly ale; hardly ever saw him drink liquor; was not separated from O'Laughlin until he went out from Rullman's Hotel. That was about 10 or a little after; next saw him again on Saturday morning; have very seldom, if ever, seen O'Laughlin drink whisky; have never seen him intoxicated but twice.

Edward Murphy. Reside in Baltimore. On 13th April last, with James B. Henderson, who proposed the trip, Michael O'Laughlin and Barney Early

came to Washington. We arrived here about 5 in the afternoon. From the depot we went to Rullman's, had a drink or two, and started for the Metropolitan. We went to several places; took supper at Welch's, somewhere about 8 o'clock; were there about half an hour, and then came down to Rullman's again. There we met John Loughran, and took a walk up the street to see the illumination of the Treasury, and stopped on the corner of Ninth street and the avenue. After standing there some time, we went to the Canterbury Music Hall, stayed there some time, walked down to the Metropolitan Hotel, and then came back to Rullman's. It was about a quarter to 10 when we got into Rullman's. O'Laughlin was with us all the time. Then we went up to Platz's and back again. That brought us to about half-past 11 or 12. We then started down to Riddle's, on the corner of B and Second street, where we stayed until half-past 12 or 1; from there we went to Dubant's, on the corner of Sixth and the avenue, where we took a hack, and went to the corner of Tenth and the avenue. There is an all-night house there, and we went in and got some refreshments; suppose it was about half-past 1 when we were there. It was about 2 o'clock when we got to the Metropolitan and registered our names. Before going to bed, we went across the street to Gilson's and got a drink. It made it about half-past 2 when we got to bed. Michael O'Laughlin was with us all the time from leaving the cars until we all went to bed, except when

we first came down, while Henderson was being shaved.

I know where the house of Mr. Stanton, the Secretary of War, is. O'Laughlin was no nearer to it that night than the corner of Ninth and the avenue.

Was with him all day Friday and up to 8 o'clock that night, when I went to the Metropolitan Hotel, and did not see him again until Saturday morning. On Saturday was with him from 9 o'clock in the morning till we went to the depot to go to Baltimore; did not know of the assassination till 9 o'clock Saturday morning; never saw O'Laughlin in better spirits in my life than he was during this trip.

I remember Mr. Grillet joined us on the steps of the Rullman Hotel on Thursday night.

Saw O'Laughlin in Baltimore on the Sunday after the assassination; he told me that the officers were in search of him, and that he was going to surrender himself on the Monday following.

James B. Henderson (re-called). Am an Ensign in the United States Navy; have been acquainted with prisoner, Michael O'Laughlin, for six years; proposed to him that we should come to Washington 13th of April; we left Baltimore at 3:30 on that afternoon, arriving in this city between 5 and 6; we came up the avenue, and stopped at the Lichau House, or Rullman's Hotel; went into the barber's shop adjoining to get shaved, and O'Laughlin went up the street in the meantime, but he returned before I had finished shaving, and, with the exception of that, he was not out

of my company the whole evening until bedtime; went up the avenue to look at the illumination. We did not go up as far as Ninth street. We stopped at the corner of Seventh, and then went back to the Canterbury Music Hall. We reached there about 9; after staying there perhaps three-quarters of an hour, we returned to Rullman's Hotel. We got there between 10 and 11, and stayed about half an hour; retired for the night, at the Metropolitan Hotel, at between 1 and 2 o'clock in the morning.

We did not go further west than a little beyond Seventh street, on Thursday evening; O'Laughlin was not any where in the neighborhood of Franklin Square—Mr. Stanton's; he was with me all the time, except when I was being shaved; do not know certainly whether he slept at the Metropolitan that night; saw him in his room, and was there the next morning when they called him. On Friday afternoon, he left me in company with Mr. Early, but I met him again in the evening at Rullman's Hotel. He was there with me until 10 o'clock, and then he went out with a man named Fuller. He was there when the news of the President's assassination came. Our party had arranged to return to Baltimore on Friday morning, but I proposed to stay until Friday evening.

Cross-examined. I do not know the name of the street on which Mr. Stanton resides, but I have been shown the house. It was impossible for O'Laughlin to have been there on the evening of Thursday, 13th of April, for I was with him the whole evening. There was a good deal

of free drinking that night by our party, and it was continued until a late hour; impossible for me to say how many drinks we had; should think not more than ten. They were mostly taken at hotels and restaurants on the avenue. One of the party was drunk—Mr. Early—but the others were sober enough to be conscious of each other's movements or presence, or absence.

Knew of his going to see Booth the next morning at the National Hotel; went there to call for him, but found he had left. On going back to Rullman's, found he was there, and he said he had been to the National Hotel, but Booth was out; do not know of any other attempt on his part to see Booth, nor do I know his object in seeking that interview.

O'Laughlin did not say anything to me about Booth owing him money, and that he wanted to get some from him. He only told me that he had been to see him; had no particular reason for not returning to Baltimore on Friday; I wanted to stay a little while myself, and asked the others to stay. O'Laughlin himself had not spoken of staying over.

Daniel Loughran. I reside in this city; have known accused, O'Laughlin, for months. On Thursday evening, 13th April, at a quarter past 7, saw him in front of Rullman's Hotel, on Pennsylvania avenue, in company with Lieutenant Henderson, Edward Murphy and Bernard Early; did not join them; went home to supper. O'Laughlin and Murphy came to my boarding house, and we met Henderson and Early in front of

Adams' Express Office, on Pennsylvania avenue about 8 o'clock. We went into Platz's Restaurant and from there to Rullman's Hotel. From Rullman's we went up to the corner of Pennsylvania avenue and Ninth, about 9 o'clock. We then went into the Canterbury, stayed there until 10; from there to the Metropolitan Hotel, and then to Rullman's reaching there at half-past 10; Michael O'Laughlin was with me from the time we joined Henderson and Early until we went down to Rullman's Hotel.

Do not know where Mr. Stanton's house is, but know where Franklin Square is, and I know that O'Laughlin could not have been up there during that time. Mr. Grillet joined us at Rullman's at about half-past 10, and I was with them until after 12 o'clock. O'Laughlin was there all that time.

Saw them the next evening between 7 and 8, at Rullman's Hotel; was there until perhaps half-past 9. Did not miss him from the time I went there until about half-past 9, when I went home, and saw him no more that night. O'Laughlin wore a plaid vest and pants; he had on a black slouch hat.

George Grillet. Reside in Washington; have known the accused, Michael O'Laughlin, two years; saw him on the steps of Rullman's Hotel, between 10 and half-past, on the night of the 13th April, and he bowed to me. Lieutenant Henderson and Edward Murphy were with him, and Henry Purdy joined the party, and did not leave them until between 12 and 1 o'clock; saw O'Laughlin the next morning, and then not until 8 o'clock

at night; stayed with them until between 11 and 12. I was at the Lichau House or Rullman's Hotel when I heard the news of the President's assassination. O'Laughlin was there at the time; did not notice how he behaved when he heard of the assassination. He left shortly after the news came that the President was killed; he and a man named Fuller left together. On that evening he had on a Scotch plaid vest and pants; can not swear positively to the coat, he had a habit of wearing a sack-coat.

Henry E. Purdy. Am superintendent of Rullman's Hotel in this city; saw O'Laughlin at about half-past 10 on the night 13th April, with George Grillet, Loughran, Murphy and Early. Whenever I was in the bar they were there, until a few minutes after 12, when I closed up, and they went out at the side door; am confident that O'Laughlin was with them when they came there at about half-past 10; saw them again on Friday at the same place.

Was standing in front of the door when I heard of the assassination, and I went in and told them what I had just heard from a cavalry sergeant; that the President had been assassinated, and that Booth was the one who had done it. They were all standing together drinking. O'Laughlin was right at the end of the bar, and he was the one I first spoke to when I went in.

When I went in he seemed surprised, and said he had been in Booth's company very often, and people might think he had something to do with it; do not remember when he individually left that night, but it was after

12 when the whole party was gone. He has stayed at my house when he has come down to the city.

To the COURT. Sometimes he would come down pretty often in a week, and sometimes I would not see him for two weeks. On the Thursday night he had dark clothes on; he generally wore dark clothes.

John H. Fuller. Am engaged in business in this city; have known the accused, O'Laughlin, fourteen years. On Friday, 14th April, saw him at Rullman's on the avenue between 7 and 8 o'clock, and again between 10 and 11. Were both there when the news of the President's assassination was brought in, and we left there together to go to the Franklin House, where I was stopping. He stayed all night with me, and got up about 8 o'clock next morning, and went with me to New Jersey avenue, and then to the Lichau House, and there I parted with him; he joining his other friends there. When he heard of the President's assassination, he did not show any fright, nor did he say anything about Booth; he said he was sorry for it; that it was an awful thing.

John R. Giles. Am bartender at No. 456 Pennsylvania avenue, Rullman's Hotel; have known O'Laughlin about four months. He was at our place on evening 13th April, with Barney Early, Murphy, Lieutenant Henderson, Purdy and several others; was there early in the evening, and again about 10 o'clock, and stayed till after 11; joined them when they went out, and was with them until 1 o'clock. They were there again on Friday even-

ing, nearly all the evening. The news of the assassination came in, I think, between half-past 9 and 10; and O'Laughlin was there at that time. He afterward went out with Mr. Fuller.

P. H. Maulsby. Am brother-in-law to accused, O'Laughlin. O'Laughlin came from the South to Baltimore in August, 1862, somewhat sick. He went with his brother, who was in the produce and feed business, and remained with him until the fall of 1863. O'Laughlin was here off and on from that period up to 14th March.

Knew J. Wilkes Booth intimately. Mrs. Booth owns the property in which the O'Laughlin family resides, and Mrs. Booth lived opposite for four years. The boys, Michael and William, were schoolmates of J. Wilkes Booth; their intimacy has continued for twelve years.

After leaving Washington, the home of Michael O'Laughlin was with me. From 18th March to 13th of April he was with me, and from the 30th March to 12th April, can speak positively as to his being with me at Baltimore; know he was at home on the 7th of March, and remained at home some days. I know of his being sent to Washington by his brother on 13th March, and on the 14th his brother telegraphed him here respecting a car load of hay.

He returned to Baltimore on the following Saturday, and from that time he remained at home till he came to Washing-

ton, 13th April. In February, I could not state positively as to his being at home. He was at home on the 7th, the 14th, and my impression is that he was then home for a couple of weeks.

He came home on Saturday evening; I saw him about 7 o'clock; the officers had been to the house then in search of him; informed him of that.

On Monday morning O'Laughlin authorized me to procure an officer, and voluntarily surrendered himself.

As a boy, he was always a very timid boy.

I never recollect having seen him in a passion in my life. On political questions he has never been violent; have never heard him express any opinion, except in a very moderate way, on the issues of the times.

On Saturday evening, met Mr. O'Laughlin and Mr. Early together, just as they returned from Washington. On Sunday morning Mr. Wallace and other officers came to our house in search of O'Laughlin; believe officers had been there on Saturday, though I had not seen them. On Monday was sent for by Michael; went for a hack, and called for Mr. Wallace, who was not then aware of O'Laughlin's whereabouts; went into the house, Mr. Wallace remaining in the hack, and Michael came out, and I introduced him to Mr. Wallace and Mr. James S. Allison. There was nothing, I believe, said from that time till we reached the Marshal's office.

Mr. Cox, who was counsel for both *O'Laughlin* and *Arnold*, made one address to the Court for both prisoners. See *post*, p. 329.

THE TRIAL OF SAMUEL ARNOLD FOR CONSPIRACY AND MURDER, WASHINGTON, D. C. 1865.

THE NARRATIVE.

Samuel Arnold,¹ who, like O'Laughlin, had known Booth at school, entered into the plot to kidnap President Lincoln. He does not seem to have approved of the assassination, and even withdrew from the kidnaping scheme, for at a meeting held in Washington in February, 1865, at the Lichau House, he declared he would have nothing further to do with the conspiracy. At this meeting, Booth, O'Laughlin, Atzerodt, Surratt were present. Booth got very angry when Arnold said that if the thing was not done that week while he was there, he would withdraw, saying that he ought to be shot for expressing himself in that way. Arnold replied that two could play at that game.² He left Washington in March and went to Maryland where he wrote a letter to Booth, in which he counseled him to give up his plan;³ and about the first of April took a position as bookkeeper in the store of Mr. Wharton at Fortress Monroe, where he was at the time of the assassination. There is little proof that he had any part in the murder of President Lincoln, though that he was a member of the original conspiracy is equally clear.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.
Major-General DAVID HUNTER,⁴ President.⁵

May 13.

The charge against *Samuel Arnold* was that he was a member of the general conspiracy and that in the further prosecu-

¹ "Samuel Arnold was a native of Maryland. His parents resided in Baltimore, and a brother lived at Hookstown about six miles from Baltimore. He was twenty-eight years of age at the

tion of said conspiracy, "did combine, conspire with and aid, counsel, abet, comfort and support the said John Wilkes Booth, Lewis Payne, George A. Atzerodt, Michael O'Laughlin and their confederates in said unlawful, murderous and traitorous conspiracy and in the execution thereof."⁶

Having pleaded *not guilty*,⁷ the taking of the testimony began today.

Judge Advocate General *Holt*⁸ and Assistant Judge Advocates *Bingham*⁹ and *Burnett*¹⁰ for the Government.

*Walter S. Cox*¹¹ for the Prisoner.

THE TESTIMONY FOR THE PROSECUTION.

Eaton G. Horner. On the morning of April 17th, Mr. Randall and myself arrested prisoner, Arnold, at Fortress Monroe. We searched his person and his carpet-bag in which we found a pistol, something like a Colt's. He said he had left another pistol and a knife at his father's at Hookstown.

Cross-examined. Arnold made a statement verbally to us at Fortress Monroe. Before we left Baltimore a letter was given to us by his father to give to him when we should arrest him. We handed him the letter and he read it. Inquired of him if he was going to do as they asked him to do, and he said that he was. He then gave us a statement and the names of certain

men connected with a plan for the abduction of Abraham Lincoln.

Mr. Stone. I object to the declarations of one of the accused against others of the accused, made perhaps to throw the responsibility off his own shoulders on that of the others.

The PRESIDENT, after consultation with the members of the Commission, announced that the objection was overruled.

Mr. Horner. About three weeks previous to Arnold's going to Fortress Monroe, he said he was at a meeting held at the Lichau House, on Pennsylvania avenue. J. Wilkes Booth, Michael O'Laughlin, George A. Atzerodt, John H. Surratt, and a man with the alias of Moseby, and another,

time of the assassination. He joined the Confederate army at the breaking out of the rebellion." Oldroyd, p. 146.

² Eaton G. Horner, p. 325.

³ See p. 327.

⁴ See p. 34.

⁵ For the other members of the Court, see *ante*, p. 33.

⁶ See p. 40.

⁷ See p. 40.

⁸ See p. 35.

⁹ See p. 35.

¹⁰ See p. 36.

¹¹ See p. 42.

a small man, whose name I could not recollect, were there; asked him if he ever corresponded with Booth. At first he denied, but on my mentioning the letter that had been found in Booth's trunk, mailed at Huntstown, he admitted that he wrote that letter. In same conversation he told me about the pistol and knife at his father's farm. We imprisoned him till evening, when we brought him to Baltimore.

In that conversation, Arnold said that Booth had letters of introduction to Dr. Mudd and Dr. Queen, but he said he did not know from whom Booth got the letters. On arriving in Baltimore, we took Arnold to Marshal McPhail's office. At the meeting at which Arnold and others were present an angry discussion took place. Booth, he said, got angry at something he said. Arnold said that if the thing was not done that week that he was there he would withdraw. Booth got angry at this, and said that he ought to be shot for expressing himself in that way, or he had said enough for Booth to shoot him, or words to that effect, when Arnold said that two could play at that game. Arnold said that he withdrew at that time, and on the 1st of April occupied a position at Fortress Monroe with Mr. W. Wharton.

He did not state, or I do not remember, the precise date of the meeting, and I do not know whether he said he had seen Booth since or not.

He said the purpose of the parties in this conspiracy, up to the time he withdrew, was to abduct or kidnap the President and take him South, for the purpose of making this Government have

an exchange of prisoners, or something like that; asked him what he was to do in it, what his part was; he said he was to catch the President when he was thrown out of the box at the theater.

On my asking Arnold where he got the arms, he said that Booth furnished the arms for all the men. Arnold said he asked Booth what he should do with the arms; Booth told him to take them and do anything with them; sell them if he chose. There was a knife and a pistol at his father's, and a pistol he brought with him to Fortress Monroe to sell; that is the one we got in his carpet-bag.

From what Arnold said, do not think that the meeting to which he referred was the first meeting. He said that at that meeting there were some new men that he had not seen before. He said that after discussing the scheme, he came to the conclusion that it was impracticable; that was the word he used; understood him that he individually abandoned the scheme at that time, but did not understand that the scheme was abandoned by the party, but that he considered that plan or mode of kidnapping the President as impracticable, and wished to withdraw from having anything further to do with it. There was no rope found in Arnold's sack.

Voltaire Randall. Know the prisoner, Arnold. When we arrested him, I examined his carpet-sack, and found in it some letters, papers, clothing, a revolver, and some cartridges.

Lieutenant William H. Terry. Am attached to Colonel Ingraham's office in this city. On the

night after the assassination, Mr. William Eaton, who took charge of the trunk of J. Wilkes Booth, placed in my hands the papers found among Booth's effects.

(A letter was handed witness.) That is one of the papers, and it was in that envelope. (The letter was read as follows:)

Hookstown, Balto. Co., March 27, 1865.

Dear John: Was business so important that you could not remain in Balto. till I saw you? I came in as soon as I could, but found you had gone to W—n. I called also to see Mike, but learned from his mother he had gone out with you, and had not returned. I concluded, therefore, he had gone with you. How inconsiderate you have been! When I left you, you stated we would not meet in a month or so. Therefore, I made application for employment, an answer to which I shall receive during the week. I told my parents I had ceased with you. Can I, then, under existing circumstances, come as you request? You know full well that the G—t suspicions something is going on there; therefore, the undertaking is becoming more complicated. Why not, for the present, desist, for various reasons, which, if you look into, you can readily see, without my making any mention thereof. You, nor any one, can censure me for my present course. You have been its cause, for how can I now come after telling them I had left you? Suspicion rests upon me now from my whole family, and even parties in the county. I will be compelled to leave home any how, and how soon I care not. None, no not one, were more in favor of the enterprise than myself, and today would be there, had you not done as you have—by this I mean, manner of proceeding. I am, as you well know, in need. I am, you may say, in rags, whereas today I ought to be well clothed. I do not feel right stalking about with means, and more from appearances a beggar. I feel my dependence; but even all this would and was forgotten, for I was one with you. Time more propitious will arrive yet. Do not act rashly or in haste. I would prefer your first query, “go and see how it will be taken at R—d, and ere long I shall be better prepared to again be with you.” I dislike writing; would sooner verbally make known my views; yet your non-writing causes me thus to proceed.

Do not in anger peruse this. Weigh all I have said, and, as a rational man and a friend, you cannot censure or upbraid my conduct. I sincerely trust this, nor aught else that shall or may occur, will ever be an obstacle to obliterate our former friendship and attachment. Write me to Balto., as I expect to be in about Wednesday or Thursday, or, if you can possibly come on, I will Tuesday meet you in Balto., at B—. Ever I subscribe myself,

Your friend,

Sam.

William McPhail. Am acquainted with the handwriting of Samuel Arnold

(Exhibiting to the witness the letter signed “Sam.”) That has somewhat the ap-

pearance of his handwriting, though I think it is rather heavier in some parts of it; should say it was his handwriting.

George R. Magee.

The Judge Advocate. State to the Court whether you know the prisoner at the bar, Samuel Arnold. I do. State to the Court whether or not he has been in the military service of the rebels.

Mr. Ewing. I object to that question.

The COMMISSION overruled the objection.

George R. Magee. I can not state positively of my own knowledge that the accused, Arnold, has been in the military service of the rebellion; have seen him in Richmond with the rebel uniform on; whether it was the uniform of a private soldier or an officer, can not remember. This was in the year 1862.

James M. McPhail (recalled). (Exhibiting the "Sam" letter to witness.)

I think that letter is in the handwriting of Samuel Arnold; the direction, "J. Wilkes Booth," I should also think is his; am acquainted with the handwriting of the prisoner, from having received a letter of his from his father, dated 12th of April, from Fortress Monroe, the writ-

ing of which looks similar to that of this letter signed "Sam."

Littleton P. D. Newman. Know the accused, Arnold. On the 9th, 10th, or 12th September, Mr. Arnold had been helping us to thrash wheat at a neighbor's, and during that time there was a letter brought to him. In that letter there was either a twenty or a fifty-dollar note. He read the letter, and remarked that he was flush of money, or something to that effect. After having read the letter, he handed it to me, and I read some half a dozen lines, possibly—not more. I did not understand it; it was very ambiguous in its language; and I handed it back to him, and asked him what it meant. He remarked that something big would take place one of these days, or be seen in the paper, or something to that effect. That was about all that occurred.

Do not remember that I saw the signature to the letter; if I did, I do not remember what it was.

William E. Cleaver, see page 76.

Mrs. Mary Van Tine, see page 314.

Billy Williams, see page 314.

Edward C. Stewart, see page 315.

THE DEFENSE.

William S. Arnold. Am brother to prisoner, Samuel Arnold; reside at Hookstown, Baltimore County, Md. From 21st of March up to Saturday, 25th, my brother was with me in the country, at Hookstown.

We went into Baltimore Saturday evening, 25th, and returned to the country Sunday, 26th. We came again into town

either on Tuesday or Wednesday. I went to the country again and came in on Friday night. He went out with me on 1st April and in the afternoon he went to Fortress Monroe. From the 21st to 25th, saw him every day, and he slept with me every night.

Frank Arnold. Accused, Samuel Arnold, is my brother. Gen-

erally reside at my father's in Baltimore. Saw my brother on 30th and 31st March last. On Friday morning gave him a letter, which came for him from Mr. Wharton, in reference to his application for a situation, telling him to come down; he went down Saturday afternoon, 1st April, on the Norfolk boat, at about half-past 4. My brother had made application for employment to Mr. Wharton; do not know the date.

Jacob Smith. Live in Hookstown, Baltimore County, Md., about half a mile from the residence of William S. Arnold, brother of prisoner, Samuel Arnold. Our farms join. From 20th to 22nd of March last, up to near the 30th, saw the prisoner, Samuel Arnold, nearly every day; sometimes three or four times a day.

Charles B. Hall. For past two months have been at Fortress Monroe, as clerk to Mr. Wharton, a sutler there. His store is outside of the fortification, at what is called "Old Point." Got acquainted with the prisoner, Samuel Arnold, at Mr. Wharton's store. He came there the latter part of March, or 1st of April. Was employed by Mr. Wharton to assist him in book-keeping. I think he stayed there two weeks and one day. Saw him every day, but not all the time

George Craig. Have lived at

Old Point during the past two months, and have been employed as salesman in Mr. Wharton's store. Have seen the prisoner, Samuel Arnold there; he was a clerk—chief clerk, I believe—in the same establishment. He came there on Sunday morning, in the latter part of March or 1st of April, and remained there about two weeks, up to the time of his arrest. Saw him every day during that time.

Minnie Pole. Reside in Baltimore. Am acquainted with the prisoner, Samuel Arnold. Saw him in that city on 20th, 27th and 28th of April. Have not seen him since, until now.

Eaton G. Horner (recalled). The facts stated to me by the accused, Samuel Arnold, to which I have testified, were communicated to me by Arnold at Fortress Monroe. He did not speak of anything that occurred on the boat.

John W. Wharton. Live in the city of Baltimore; my place of business is at Fortress Monroe, outside. Prisoner, Arnold, was in my employ from the 2nd April to 17th, when he was arrested. He was employed by the week as a clerk. Was absent about three days during that time, but I have reason to believe he was there all the time, or I should have been told of his absence. He was employed by me in consequence of a letter received by me from his father; also one from himself.

MR. COX'S SPEECH IN DEFENSE OF MICHAEL O'LAUGHLIN AND
SAMUEL ARNOLD.

Mr. Cox. Mr. President and Gentlemen of the Commission: I have appeared before you as the sole counsel of the

prisoner, Michael O'Laughlin, and, in part, represent the accused, Samuel Arnold.

I now rise to their defense, deeply impressed with the gravity of their situation, and the importance of the duty it imposes.

For myself, I would say, that born and nurtured under the ægis of the Federal Government, and schooled from childhood in that all-embracing patriotism which knows no section nor party when the interests or glory of my country is in question, I have been second to none, in attachment to the Federal Union, and in hostility to the rebellion which menaced its existence. I need hardly add, that no one could have more deplored and execrated the odious crime wrought upon the Chief Magistrate of the nation at a moment when the rewards of peace and sectional reconciliation were about to crown his arduous and patriotic labors. Nor was I willing to connect my humble name with this defense until I felt assured that the accused, for whom my service was first invited, was merely the victim of compromising appearances, but was wholly innocent of the great offense. And now that I have heard the evidence produced to you, I am strong in the conviction that, even if it appear that these two accused were ever beguiled, for a moment, to listen to the suggestions of this restless schemer, Booth, yet there is no blood on their hands, and they are wholly guiltless of all previous knowledge of, or participation in, that "arch deed of malice" which plunged the nation into mourning. I feel, therefore, that I stand here, not as the defender of assassins, but to rescue the innocent from the opprobrium of this great crime and a death of infamy.

I can not forbear the remark that, upon this trial, both the accused and their counsel have labored under disadvantages not incident to the civil courts, and unusual even in military trials. In both the civil courts and courtmartial the accused receives not only a copy of the charge, or indictment, in time to prepare his defense, but also a list of the witnesses with whom he is to be confronted. And, in the civil

courts, it is usual for the prosecutor to state in advance the general nature of the case he expects to establish, and the general scope of the evidence he expects to adduce. By this the accused is enabled not only to apply intelligently the test of cross-examination, but also to know and show how much credit is due to the witnesses who accuse him. In this case the accused were aroused from their slumbers on the night before their arraignment, and, for the first time, presented with a copy of the charge. For the most part, they were unable to procure counsel until the trial had commenced; and, when counsel were admitted, they came to the discharge of their duties in utter ignorance of the whole case which they were to combat, except as they could gather it from the general language of the charge, as well as, for the most part, wholly unacquainted with the prisoners and their antecedents; and the consequence is, that the earlier witnesses for the Government were allowed to depart with little or no cross-examination, which, subsequent events show, was of vital importance to elicit the truth, and reduce their vagueness of statement to more of accuracy. And, I may add, that important parts of this testimony have consisted of the always suspicious statements of informers and accomplices, brought from remote places, whose antecedents and characters it is impossible for the prisoners to trace.

I am constrained, further, to notice the manner in which the trial has been conducted, and which, I think, can hardly have a parallel. The accused were arraigned upon a single charge. It described one offense of some kind; but, however specific in form, it seems to have been intended, like a purser's shirt, to fit every conceivable form of crime which the wickedness of man can devise. The crime is laid at Washington; yet we have wandered far away, like mariners who have lost their compass and can not see the polar star. We have been carried to the purlieus of Toronto and Montreal, and have skirted the borders of New York and Vermont, touching at Ogdensburg and St. Albans; have passed down the St. Lawrence, and out to sea; inspected our ocean shipping; have

visited the fever hospitals of the British islands; have returned to the prison-pen of Andersonville; have seen the camp at Belle Isle and the historical Libby, and penetrated the secret councils of Richmond; have passed thence to the hospitals of the West, and ascended the Mississippi, and, at length, terminated this eccentric career in the woods of New York. Under a charge against these prisoners of conspiring to kill the President, and others, in Washington, Jefferson Davis and his associates have been tried, and, in the judgment of many, convicted of starving, poisoning, arson, and other crimes too numerous to mention.

I have apprehended that the counsel for the accused would appear in a false position, from their apparent acquiescence in this wide range of inquiry, and, therefore, feel it due to myself, at least, to explain. I, for my part, have felt no interest whatever in resisting the exposure of the misdeeds of the rebel authorities and agents. My only concern has been to show that my clients had nothing to do with the conspiracy set forth in this charge. To the best of my ability, I have scrutinized and sifted the evidence of that conspiracy, so far as necessary to their defense. With regard to other matters, foreign to this issue, I have to say, in the first place, the charge was artfully framed, with a view to admit them in evidence. It imputes that the accused conspired, with Jefferson Davis and others, to kill and murder the President, etc., with intent to aid and comfort the insurgents, etc., and thereby aid in the subversion and overthrow of the Constitution and laws of the United States. And, on the principle that other acts, constituting distinct offenses, were sometimes admitted as proof of intent, these subjects, foreign to the main issue, have been put in evidence. Although this seems to me a total misapplication of the rule of practice, yet, the Court having settled the principle in favor of the prosecution in the early part of the trial, it became useless to object to each separate item coming within it afterward. It would have been to tilt with wind-mills, for by no possible ingenuity can these foreign matters be used to the prejudice of the accused. I have supposed that

the only object of introducing them was to bring to the public, in the shape of sworn testimony, information of the practices of the rebel leaders, to which, however irregular the proceeding, I had no objection to interpose. I can not, for a moment, suppose that the object was to inflame prejudice against the accused, because of their supposed remote connection with the authors of all these evils, and, for want of higher victims, to make them the scapegoats for all the atrocities imputed to the rebellion; to immolate them, to hush the clamors of the public for a victim, or to appease the Nemesis that has recorded the secrets of the Southern prison-houses, or the deadly deeds wrought through fire and pestilence; for such a proceeding would disgrace this Government in the eyes of all Christendom, as much as assassination would disgrace the spurious Government which has just vanished into thin air.

To come to the issue before this Commission: I had intended to confine myself to a simple review of the evidence; but the anomalous character of the charge, the uncertainty in which we are left with reference to the positions to be taken by the Government, and the general course of the investigation pursued, admonish me that I should present some legal considerations, at least, of a general character. This Commission sits by authority of the order of the President, offered in evidence, of September 24, 1862, which declared martial law against all rebels and insurgents, their aiders and abettors, and all guilty of any disloyal practice, affording aid and comfort to rebels against the authority of the United States. The question of jurisdiction having been discussed at length already, I shall not enter upon the question whether this Court has jurisdiction to try the accused upon this charge, but, assuming that for argument's sake, I shall endeavor to ascertain the grounds and limits of that jurisdiction, and the mode in which it is to be exercised; and, with this view, shall first submit some general reflections upon the character of the offenses set forth in the charge and specification, as they are known to, and punishable by, the civil law of the land, and then en-

deavor to ascertain how far this Commission, in dealing with them, is to be guided and restrained by that law.

Below the grade of treason, crimes are ranged under two general heads, viz.: felonies and misdemeanors. The class of felonies embraces the more heinous offenses, such as murder, arson, robbery, rape, etc.; and the idea of felony is generally associated with that of capital punishment, though, in point of fact, they are not inseparably connected. The class of misdemeanors embraces the offenses of lower degrees, such as perjury, battery, libels, public nuisances, and conspiracies, and, in short, all crimes less than felonies. See 1 Russell on Crimes, pp. 44, 45.

A conspiracy, then, belongs to the lower grade of crime, and this whatever may be its object, whether to commit a felony or a misdemeanor. See 2 Bishop on Criminal Law, sec. 202.

A word as to the rationale of this rule. The criminal law takes no notice of a mere mental intent, unaccompanied by an act. It would be equally impossible for human wisdom to scrutinize the operations of the mind with that accuracy essential to justice, and to adapt a scale of punishments to offenses which have no visible proportions, no tangible effects. Besides which the law makes a charitable allowance for that repentance and change of purpose which may intervene at any stage between the first conception and the consummation of crime. Between the intent and the consummation lies the wide region of attempts from the first feeble preparation or movement, to the striking of the deadly blow. A conspiracy is scarcely more than an intent, at least in its earliest stage. It is but the intent of several, mutually communicated, perhaps with mutual excitement, and encouragement, and consultation, and the chances of its falling short of an overt attempt are multiplied just in proportion to the number of wills between which concert is necessary to successful action. If it can be properly said to advance beyond a mere intent, it is in the nature of an attempt, but it is so manifestly inchoate and elementary, leaving so wide a scope for the working of that lingering good which may prompt to change of purpose,

that the law wisely places it in the lower grade of offenses. "All indictable attempts (says Bishop, vol. 1, sec. 528), whether to commit felony or misdemeanor, are misdemeanors."

As the idea of capital punishment is ordinarily associated with that of felony, though the more appropriate idea is that of forfeiture of property, so with misdemeanor is associated the punishment of fine and imprisonment only. Says Bishop, vol. 1, sec. 626: "The ordinary and appropriate common law punishment for misdemeanor is fine and imprisonment, or either of them, at the discretion of the Court. It is inflicted in all cases in which the law has not provided some other specific penalty."

So much for the case of a conspiracy to commit a felony. How is it with a conspiracy to commit treason?

In looking at this charge and specification, one may doubt whether the terms "in aid of the said rebellion" are predicted of the conspiring, confederating, and combining, or of the acts charged to have been done in pursuance of said conspiracy and combination, etc. Inasmuch as giving aid and comfort to the enemies of the United States is one form of treason, it may be supposed that a mere unexecuted conspiracy may amount to giving aid and comfort to the enemies of the Government, and thereby become treason, and it may be supposed that to show such a conspiracy alone would be to make out a substantive case of treason, and that a party might be convicted thereof under this charge, although the evidence might show him to be not guilty of the crimes actually perpetrated in pursuance of the alleged conspiracy. Let us inquire, then, what is the law of treason.

The murder of the President of the United States, considered in itself, is no more, in the eye of the law, than the murder of any other citizen. Whether, however, that murder, perpetrated for the very object of overthrowing the Government or aiding its enemies, is treason, is a different question. I do not require to discuss that question. I pause, however, to remark that the term "enemies," in this part of the Con-

stitution, has been understood and adjudged to mean public and not domestic enemies. And Congress have legislated in exact accordance with this view; for in the act to suppress insurrection, to punish treason and rebellion, etc., of July 17, 1862, they provide, in the first section, that any one who shall commit the crime of treason, and shall be adjudged guilty thereof, shall suffer death; and in the second section, that any one convicted of giving aid and comfort to the existing rebellion, shall be punished by fine or imprisonment, or both. But whether murder, committed with the intent charged, is treason, either in the sense of levying war or of giving aid and comfort to the enemies of the United States, is immaterial to my present purpose. All that I need to maintain is, that a mere conspiracy to do this is not treason.

The Constitution, in art. 3, sec. 3, declares that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort, and no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. To constitute treason, therefore, there must be an overt act. In the case of *Bollman and Swartout*, 4 Cranch, S. C. R., 75, in which these parties were charged with levying war against the United States in combination with Aaron Burr, the Supreme Court said, "To constitute that specific crime for which the prisoners now before the Court have been committed, war must be actually levied against the United States. However flagitious may be the crime of conspiring to subvert by force the Government of our country, such conspiracy is not treason. To conspire to levy war, and actually to levy war, are distinct offenses. The first must be brought into open action by the assemblage of men for a purpose treasonable in itself, or the fact of levying war can not have been committed." Again, "in the case now before the Court, a design to overturn the Government of the United States in New Orleans by force would have been, unquestionably, a design which, if carried into execution, would have been treason, and the assemblage of a body of men for

the purpose of carrying it into execution would amount to levying war against the United States; but no conspiracy for this object, no enlisting of men to effect it, would be an actual levying of war." In conformity with the principles now laid down, have been the decisions heretofore made by the judges of the United States. Judge Chase, in the case of *Fries*, stated the opinion of the Court to be, "that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, they are guilty of the treason of levying war," etc. So much for that species of treason which consists of levying war. The same rule prevails as to the other form, viz.: adhering to the enemy, and giving them aid and comfort. In the case of *the United States v. Pryor*, 3 Wash. Rep., p. 234, in which the accused was charged with adhering to the enemy, and giving them aid and comfort, by purchasing provisions for them, Judge Washington said:

"That the prisoner went from the British seventy-four to the shore with an intention to procure provisions for the enemy, is incontestably proved, and, indeed, is not denied by his counsel. If this constituted the crime of treason, the motives which induced him to attempt the commission of it, and by which there are the strongest reasons to believe he was most sincerely actuated, would certainly palliate the enormity of it. But the law does not constitute such an act treason, even although these motives had not existed; and although intentions and feelings as guilty as ever stained the character of the most atrocious traitor were proved against the prisoner, can it be seriously urged that if a man, contemplating an adherence to the enemy, by supplying them with provisions, should walk toward the market house to purchase, or into his own fields to slaughter, whatever he might find there, but should, in fact, do neither the one nor the other of the intended acts, he has committed an overt act of adhering to the enemy? Certainly not. All rests in intention merely, which our law of treason, in no instance, professes to punish."

Thus we find it adjudged by the highest authorities, that under our Constitution, mere intention, or preparation, or conspiracy, to levy war or adhere to and aid and comfort the enemies of the Government, does not constitute treason, but misdemeanor only, and Congress seem clearly to recognize

this view in their legislation, for by the act entitled "An act to define and punish certain conspiracies," approved July 21st, 1861, they enact "that if two or more persons, within any State or Territory of the United States, shall conspire together to overthrow, or to put down, or to destroy by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the United States," etc., "each several person so offending shall be guilty of a high crime, and upon conviction thereof, in any District or Circuit Court of the United States having jurisdiction thereof, shall be punished by a fine not less than \$500, and not more than \$5,000; or by imprisonment with or without hard labor, as the court shall determine, for a period not less than six months, nor greater than six years, or by both fine and imprisonment."

In other words, the offense is declared to be a high misdemeanor, and has annexed to it, by this law, the punishment appropriate to that degree of crime.

It results, then, that a mere conspiracy to commit either treason or felony, in this country, is a mere misdemeanor. Of course, these remarks apply only to unexecuted conspiracies. If the conspiracy to commit treason or felony be executed by the actual commission of the intended crime, it is held that the misdemeanor is merged in the higher crime. And the law is conceded to be, that if parties join and continue in a conspiracy, and different parts are assigned to the different members, and are executed, wholly or partially, each is responsible for everything done in pursuance of the common design.

But if, after a conspiracy is organized, but unexecuted, any party involved therein should withdraw and abandon it, and refuse to have any further connection with it, he is not responsible for any act done by the others in prosecution of the objects of the conspiracy afterward.

A conspirator may be said to be a compound of a principal and an accessory before the fact. Conspirators mutually incite, encourage, advise and instruct each other to the commission of a crime, and are thus accessories before the fact, and

at the same time each expects to act as principal in some way or other.

In the case of a principal, so long as an act rests in bare intention, it is not punishable. So, if a man start out to commit a crime, as in the case put by Judge Washington in the case of the *United States v. Pryor*, before cited, of a man going to market to purchase provisions, or going to his field to slaughter cattle for the enemy, but doing neither in fact.

And in the case of an accessory before the fact—that is, one who counsels, persuades or commands the commission of a crime—it is laid down in Wharton's *American Criminal Law*, citing 1 Hale, 618, that “the procurement (by an accessory) must continue till the consummation of the offense, for if the procurer of a felony repent, and before the felony is committed actually countermand his order, and the principal, notwithstanding, commit the felony, the original contriver will not be an accessory.” The conspirator, then, who withdraws from a conspiracy before the same is executed, is in the position of a principal who has repented before acting, and of a procurer who has incited or ordered a crime, and withdrawn his order before it was acted upon. And his case is evidently still stronger where he was not the principal conspirator, who has incited and procured others, but was only one of the subordinates, himself incited and procured by others, and where, after yielding for the time to their influence, he withdraws from and resists their solicitations. The responsibility of such a person for the results of the conspiracy, had he remained in it, would have been less, morally, than that of the principal, and by his withdrawal is so much the more easily got rid of.

Another proposition to be borne in mind is, that if parties conspire for one object, however criminal, and some of them commit a crime different from that contemplated by the original conspiracy, the others are not involved in their guilt. The proposition is too evident for argument. An illustration of it is found in 1 Bishop on *Criminal Law*, section 265. He says:

“Obviously, if two or more persons are lawfully together, and one of them commits a crime without the concurrence of the others, the rest are not thereby involved in guilt. So, if they are unlaw-

fully together, or if several persons are in the actual perpetration, by a concurrent understanding, of some crime, and one of them, of his sole volition, not in pursuance of the main purpose, does another thing criminal, but in no way connected with this, he only is liable. Thus, if numbers are together, poaching, and join in an attack on the gamekeeper and leave him senseless, then if one of them returns and steals the gamekeeper's money, this one only can be convicted of the robbery."

So, in the analogous case of an accessory, it is said (1 Hale, 617).

"If the accessory order or advise one crime, and the principal intentionally commit another, as, for instance, to burn a house, and instead of that he commit a larceny, or to commit a crime against A, and instead of that he commit the same crime against B, the accessory will not be liable."

These are the general principles which I desire to premise in reference to the general nature of crimes, and which might be applicable, more or less to this case.

I need scarcely add, that a material variance between the charge and the proof, as where one crime is charged and another proved, is fatal to the prosecution, and entitles the accused to an acquittal. Thus, if a burglary be alleged to have been committed in the house of J. Y., and it turned out in evidence to be the dwelling-house of J. S., the defendant must be acquitted for the variance. (Archbold, 95.)

So, in indictment for larceny of the goods of H, when they were proved to be the goods of H and E, the variance was admitted to be fatal. (Com. v. Trimmer, 1 Mass 476.)

So, a conspiracy against A is not sustained by proof of conspiracy against B or against the public generally. (See Wharton.) So, if a person be indicted for one species of killing, as by poisoning, he can not be convicted by evidence of a species of death entirely different, as by shooting, starving or strangling. (1 Russell on Crimes, 557.)

Still less can a conviction be had by proof of an offense which is entirely different in character.

While upon an indictment for a murder a man may be convicted of manslaughter, the essential crime being the homicide, it is very plain that he could not be convicted of an as-

sault, false imprisonment or abduction; and upon a charge of conspiracy to murder, he could not be convicted of conspiracy to imprison or to abduct.

The same rule prevails in courts-martial. De Hart says (p. 364) :

"It is a distinction which runs through the whole criminal law, that it is enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified; but the offense, however, of which he is convicted must be of the same class with that with which he is charged."

The general principles of the common law on this subject are adopted in the military code.

Let us next consider how far tribunals sitting by virtue of martial law can depart from the established law of the land in its distinctions between crimes and in its scale of punishments.

Military law, says De Hart (p. 17), is a rule for the government of military persons only; but martial law is understood to be that state of things when, from the force of circumstances, the military law is indiscriminately applied to all persons whatsoever. And Greenleaf says (vol. 3, p. 469, etc.) :

"It (martial law) extends also to a great variety of cases not relating to the discipline of the army, such as plots against the sovereign, intelligence to the enemy, and the like. It is founded on paramount necessity, and is proclaimed by a military chief, and when it is imposed upon a city or other territorial district, all their inhabitants and all their actions are brought within the sweep of its dominion."

Almost everything in the shape of authority on the subject of martial law relates to that law as exercised in a foreign and hostile country. Even in that case it has certain limitations.

General Halleck, in his work on international law and the laws of war, in treating of the effects of military occupation, says (chap. 32, sec. 6) :

"Although the laws and jurisdiction of the conquering state do not extend over such foreign territory, yet the laws of war confer upon it ample power to govern such territory, and to punish all offenses and crimes therein, by whomsoever committed. The trial

and punishment of the guilty parties may be left to the ordinary courts and authorities of the country, or they may be referred to special tribunals organized for that purpose by the Government of military occupation, etc. It must be remembered that the authority of such tribunals has its source not in the laws of the conquering, nor in those of the conquered state, but, like any other powers of the Government of military occupation, in the laws of war; and in all cases not provided for by the laws actually in force in the conquered territory, such tribunals must be governed and guided by the principles of universal public jurisprudence."

This plainly implies that where the cases are provided for by the local law, that should guide in the administration of criminal justice.

Professor Lieber, in his Instructions for the Government of the Armies of the United States in the Field, adopted by the War Department, says:

"Martial law in a hostile country consists in the suspension by the occupying military authority of the criminal and civil law and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation."

And Benet, p. 14, thus lays down the rule:

"Martial law, then, is that military rule and authority which exists in time of war in relation to persons and things under and within the scope of active military operations in carrying on the war, and which extinguishes or suspends civil rights and the remedies founded on them, for the time being, so far as it may appear to be necessary in order to the full accomplishment of the purpose of the war, the party who exercises it being liable in an action for any abuse of the authority thus conferred. It is the application of military government—the government of force—to persons and property within the scope of it, according to the laws and usages of war, to the exclusion of the municipal Government in all respects where the latter would impair the efficiency of military law or military action."

The exercise of martial law is capable of being abused. It must, therefore, have some limits. It has no code but one single, vital, fundamental principle, which is alike its justification and its limit; and that is, necessity—not state nor

political necessity, but military necessity. It is the same principle announced by Sir Boyle Roche, a member of the Irish Parliament and a breeder of Irish bulls, who, in the debate on the suspension of the habeas corpus act, said "he was in favor of surrendering a part of the Constitution, and even the whole of it if necessary, in order to save the remainder." As this alone justifies the suspension of the civil law of the land at all, so that suspension can not be legitimately carried further than is necessary to the efficiency of military action or military law—i. e., of the law governing the military force.

If this is true of a military occupation of an enemy's country, how infinitely more binding in the case of martial law prevailing at home! When an enemy's country is conquered, all political powers therein cease, and a suspension of judicial functions also generally results. There must be offenses unprovided for in such a state of things which can only be taken cognizance of by military courts established in virtue of the martial law, which is established and proclaimed by the very presence of a hostile army. Of course, revolts, insurrections, and plots against the conquering power would be wholly unprovided for in the laws of the conquered State, and must be necessarily dealt with by martial law. But all this is different when martial law exists at home. Treason, conspiracy, murder, in short, every crime, is already provided for by the civil law. When the law martial undertakes to deal with such offenses, it finds them already accurately defined in the written or common law of the land, and the appropriate punishment affixed by the same. It may find, and it certainly does find in the present case, legal courts duly constituted and in unobstructed operation. It invades the domain of the latter, wrests from them their jurisdiction, and seeks to deal with crimes which, I may say, it does not understand, for which it has no definitions, no graduated scale of penalties.

Clearly, nothing can justify this but the most urgent military necessity, and the requirements of active military operations must be the measure of that departure from the civil law, which would be legitimate and which could not be taken notice of subsequently, by that law, as an abuse.

In a beleaguered city, under martial law one who is detected in signaling the enemy, or doing any thing to cripple the defenders, secretly or openly, may be shot down without trial, or dealt with by a military commission in the most summary way. But no one would maintain that such a commission could place a petty larceny, by a civilian, on the same footing as murder, and visit it with the death penalty. It would be a criminal abuse of power, simply because wholly unnecessary to the efficiency of military operations. And even acts of military hostility, committed during a period of invasion and siege, could not, after the enemy is repulsed, the siege raised, the danger passed, be punished by summary execution without trial.

The argument on this head may be summed up thus: The law of the land defines certain crimes. It establishes a distinction and gradation among them, and visits them with appropriate punishments. It also establishes the mode in which the accused shall be tried, and certain guarantees of fairness and justice. These distinctions between crimes and punishments and these guarantees are the right alike of the innocent and guilty, the injured public and the accused. If it be absolutely necessary to the repulse of a foreign or the reduction of a domestic enemy, by the military power of the country, persons within the scope of its operations may be both tried and punished in a manner different from the course of the civil law. But without such necessity they can not be so tried. And if the situation require such trial, still, without such necessity, the military authority can not ignore but must adhere to, observe, and be guided by the civil law, in its distinctions between crimes, and in its measures of punishment. To disregard it without overruling military necessity, is unnecessarily to infringe public and private rights, and this is military oppression, which Professor Lieber says is not martial law, but is the abuse of the power that law confers.

Granting, then, for the sake of argument, that at the time of the President's assassination, when the rebellion was not yet subdued, when it was possible for its flickering and expiring

hopes to be revived by this startling event, when the mysterious plot seemed to be aimed directly at the power of the Government to effect the purpose of the war, to suppress the rebellion and perpetuate its own existence, it was necessary to employ the machinery of martial law to pursue and bring to justice the perpetrators of the murder, and on account of difficulties, supposed or real, in the trial of the accused in a civil court, to subject them to a trial by a military commission, still the question recurs, how is this Commission to deal with the accused? Now that "grim-visaged war hath smoothed his wrinkled front," that "bruised arms are hung up for monuments," that the only military action in progress, consists in the disbanding and dispersion of the national forces, that even the rancors of civil strife are yielding to an universal aspiration for peace and fraternal union, can any man, on his conscience, say, that any military exigency requires this Commission to ignore the law of the land in regard to crimes and punishments, to condemn and punish, as treason, that which is not treason by the Constitution; to confound felonies with treason on the one side, or misdemeanors on the other; to try for one offense and convict of another; to inflict punishments disproportionate to the crime, in view of the proportion between them established by the common law and universal understanding? Most clearly not. It will not do to assume that martial law, once conceded to be in force, has no limit. It is begging the whole question to assume that to concede the necessity of martial law is to concede the necessity of all its rigors and harsh contrasts with the civil law. In the able argument of Judge-Advocate Burnett on the plea of jurisdiction, on the trial of the Chicago conspirators, he says:

"Martial law can never be restricted by any defined lines, because it is the law of necessity, the law of self-defense, of self-preservation; it is a law to meet the exigencies and necessities of great, unexpected emergencies in time of war; and whatever law or rule of action becomes necessary to meet these emergencies is martial law."

He also cites Professor Greenleaf, who, in speaking of the difference between martial and military law, says:

"The tribunals of both are alike bound by the common law of the land in regard to the rules of evidence, as well as to other rules of law, so far as they are applicable to the manner of proceeding," and adds: "As, for illustration, martial law, as now being administered, is, giving these prisoners a fair, impartial hearing, according to the strict rules of the civil law, in all questions of evidence, argument, etc.; it gives them the benefit of counsel, of processes to compel the attendance of witnesses; it allows them a clear and public trial, in open day, before their peers, and before just and honorable men. But under other circumstances and greater emergencies, it might have demanded that they be shot down in the streets, and without trial and without hearing, as in case they had gone forward in this conspiracy, attacked our camps, undertaken to release our prisoners, and burn the city."

Now, on what ground can martial law admit a trial at all? On what ground can its courts be bound to observe the common law rule of evidence and proceeding? On no other but this: That, by the law of the land, this is one of the rights of the accused of which he can not be deprived, unless there be a military necessity for it. But what reason is there applicable to form, which does not apply, with ten-fold force, to matters of substance? If the accused is entitled to be tried according to the forms of the common law, as far as applicable, how much more is he entitled to be judged and punished according to that law, where no departure from it, in that respect, is required by any military emergency.

But the Government officers seem to have tasked their ingenuity to invent a new species of crime—traitorous murder, traitorous conspiracy—murder which is something more than murder, yet something less than treason; a hybrid between them, partaking of both. On the same principle, stealing a percussion cap, with intent to use it against the Government, would be traitorous larceny, instead of petty larceny. And when we inquire by what code it is to be judged and punished, we are referred to the common law of war.

The common law of war! What a convenient instrument for trampling upon every constitutional guarantee, every sacred right of the citizen! There is no invention too monstrous, no punishment too cruel, to find authority and sanction in such a common law. Is it possible that American citi-

zens can be judged and punished by an unwritten code, that has no definitions, no books, no judges or lawyers; which, if it has any existence, like the laws of the Roman Emperor, is hung up too high to be read?

I deny that the common law of war has anything to do with treason, or anything traitorous, as such. Treason, in any shape, is an offense against the civil government. The acts constituting the offense are dealt with by martial law, not as treason, but only as they interfere with military rule and operations. Such offenses as those charged are unknown to any common law of war. In short, the only common law of war, which can be admitted in this country against civilians, is the common law of the land, so far modified, only, as the military emergency of the hour requires.

I conclude, then, that, supposing this Commission to have lawful jurisdiction over the persons of the accused, for the purpose of trying them upon this charge, still the Commission are bound, in ascertaining the nature of the offense made out by the evidence, if any be proven, and in affixing a punishment to it, to follow and be guided by the law of the land, as administered in the civil courts.

The application of these general principles I shall reserve until I shall have discussed the evidence.

The evidence offers a very wide field to one inclined to collate, weigh, and comment on it, in detail, but I shall notice only so much as seems material to my case.

First, then, what are some of the facts in relation to the alleged conspiracy? The assassination of the President and other heads of Government, may have been discussed in the South, as a measure of ultimate resort, to retrieve the fortunes of the Confederacy, when at their lowest ebb; the rebel agents in Canada may have individually signified their approval of the measure, in the abstract, long since; but I undertake to maintain, upon the evidence, that there never was any final determination on the part of any person or persons, with whom any of these accused can possibly be connected, actually to attempt the life of the President, or other functionary,

until a few days—about a week—before the murder; that no conspiracy for that object, such as is charged against the accused, was formed, or, at least, had any active existence, at any time during the month of March, as imputed in the charge and specification; and that if any conspiracy had ever been organized, for such object, at an earlier period, it did not contemplate the event, otherwise than contingently, and upon a contingency which never arrived until the period I have named, and was, meanwhile, completely in suspense and abeyance.

The specification imputes that the accused were incited and encouraged to the murder by Davis, Thompson, Clay, and others, and this is of the very essence of the charge.

The theory of the prosecution is, that Booth, who is acknowledged to have been the head, and front, and soul of the conspiracy, if there was one, was only the hireling tool of these rebel emissaries. I think he was probably something more, but it will not vary the result. I think he was probably actuated not only by the sordid hope of reward, but by a misguided, perverted ambition. Of moderate talents, but considerable ambition, of strong will and passions, and high nervous organization, accustomed to play parts, and those of a tragic character, he had contracted perverted and artificial views of life and duty, and aspired to be the Brutus, in real life, that he had been or seen on the boards. He well knew, however, that the act he contemplated would be execrated all the world over, except, possibly, among those whom he intended to serve. Therefore, whether pecuniary reward or false glory was his object, he could hope for neither until he was secure of their approbation. Whatever his principle of action, he was wholly without motive for so desperate an undertaking until he had, or supposed he had, the approval of the rebel authorities. When does the evidence tend to show that this was given? On this subject three principal witnesses have testified for the Government. None of them carry farther back than January last, the date when even an individual approval of the scheme of assassination was expressed by

any of the rebel agents in Canada. The first witness, Richard Montgomery, represents Jacob Thompson as saying, in the summer of 1864, that he had his agents throughout the Northern States, and could, at any time, have President Lincoln, or any of his advisers, put out of the way. But it was only in the middle of January last that Thompson informed him that a distinct proposition for the President's assassination had been made to him, and that he was in favor of it, but was determined to defer his answer until he had consulted his Government, at Richmond, and he was then only waiting their approval. Although the witness was in constant intercourse with those men in Canada, going back and forth, until shortly before his testimony was given, he was not able to state when these rebel agents considered themselves authorized to act in this matter. But in a conversation with Tucker, a few days after the assassination, the latter said, "it was too bad that the boys had not been allowed to act when they wanted to," which would indicate that the approval waited for from Richmond was not received in time for earlier action, and this the witness distinctly states to be his impression. He inferred from Tucker's remark that the approval had been received, and that the attempt had been delayed for its arrival.

In all this, Montgomery agrees exactly with Conover. The latter states that Thompson spoke to him in February on the subject of the removal of the President and others from office, by killing them, and offered him the chance of immortalizing himself and saving the country by embarking in the enterprise; that these conversations were repeated all through the month of February, and in that month he stated he was awaiting dispatches from Richmond. The witness inquired if he thought the plan would receive the approbation of the Government at Richmond, and Thompson replied that he thought it would, but he would know in a few days. The witness knew nothing of the arrival of such dispatches, until about the 6th or 7th of April, when Surratt arrived in Canada with dispatches from Mr. Benjamin and Mr. Davis. The witness was

present in Thompson's room, with Surratt, when Thompson laid his hand upon the papers, brought by the latter from Richmond, and said, "This makes the thing all right," referring, as the witness says, to the assent of the Richmond authorities, that is, to the assassination project. On cross-examination the witness says distinctly that he understood this to be the first official approval they had received from Richmond of the plan to assassinate the President, and he knew of no other.

And this evidence, as far as it fixes the date of Surratt's arrival in Canada, and its probable object, is corroborated by Weichmann, who has testified that Surratt arrived in Washington, from Richmond, on the 3rd of April, with money in his pocket, and professing to have seen Benjamin and Davis, and to have been assured by them that Richmond would not be evacuated, and that he left, on the same evening, for Montreal, where he would probably arrive on the 5th or 6th.

There is an apparent discrepancy between the testimony of Dr. Merritt and that of Conover, which I here proceed to notice.

He represents that he was present at a meeting of a number of the rebel emissaries, in Montreal, in the middle of February last, at which George N. Sanders, after discussing the projected assassination, read a letter which he said he had received from "the President of our Confederacy," meaning Jefferson Davis, expressing approbation of whatever measures they might take to accomplish the object. Conover, on the other hand, had had conversations with Thompson all through the month of February, and no dispatches had then arrived of the purport stated by Merritt. But that Merritt is wholly mistaken, and his testimony wholly unreliable, in this particular, is clear, from several considerations:

First. The witness did not read the letter, nor does he pretend to repeat its language, nor can he distinguish very clearly between the language of the letter and that of Sanders himself. He says, at first: "Which letter justified him (Sanders) in making any arrangements that he could to ac-

comply with the object." This was the witness' construction of the letter, not its terms. When asked for its language he could not give a word of it, but said it was in substance, "That if the people in Canada and the Southerners in the States were willing to submit to be governed by such a tyrant as Lincoln, he did not wish to recognize them as friends or associates," or something like that. This was the whole of the witness' unprompted account of the substance of the letter. He is asked, however, the leading question, "And you say that in that letter he expressed his approbation of whatever measures they might take to accomplish this object?" To this he answers, "Yes." But he had said nothing of the sort. He had merely said that the letter justified such measures. Still later he says: "When he (Sanders) read the letter he spoke of Mr. Seward, and I inferred that that was partially the language of the letter; I think it was, that if those parties, the President, Vice-President and Cabinet, or Mr. Seward, could be disposed of, it would satisfy the people of the North that they (the Southerners) had friends in the North, and that a peace could be obtained on better terms than it could otherwise be obtained," etc. It will be found that, in the course of his testimony, he gives three different versions of the substance of the letter. He does not pretend to say the assassination was mentioned, in terms, in the letter, and he is evidently unable to distinguish clearly between the language of Sanders and that of Davis, and, on the whole, we are left in complete uncertainty whether we have the conclusions of the witness or those of Jefferson Davis.

But, secondly, it is perfectly certain that Jefferson Davis never would have written such a letter as this is described to be, to George N. Sanders. It is apparent, from the whole testimony, that Jacob Thompson and Clement C. Clay were the principal emissaries of the rebel Government in Canada. They represented themselves to Montgomery to be invested with full powers to do anything they might deem expedient for the benefit of their cause. Thompson seemed to have had the principal financial agency, though Clay is also said to have

had the funds used in the frontier raids. Thompson certainly was the controlling authority in regard to the assassination; the proposition was made to him, he consulted his Government and expected their approval. No others than these professed to have any authority or control over the frontier operations; and Sanders evidently acted a subordinate part and had the entire confidence of no one, Clay describing him as a very good man to do their dirty work, but not one to whom everything could be safely communicated. It was, therefore, of all things, one of the most unlikely, that a dispatch, so important as the one described by the witness, would be addressed by Davis to Sanders.

Thirdly. It was equally unlikely that Thompson and Clay would not even be privy to the fact, but would be actually excluded from the confidence of Davis and Sanders. And yet, if the witness is correct, this is the case. For when he is called on to repeat the names of those present at the meeting at which Sanders read his confidential missive, he names ten persons, but omits both Thompson and Clay. In proof that this omission was intentional and not accidental, it is to be noted, that the witness afterward spoke to Clay in Toronto about the letter Sanders had read in Montreal, and states, as a noteworthy fact, that Clay seemed to understand the nature and character of the letter, which remark would never have occurred to the witness, had Clay been present and heard the letter read, and handled and perused it himself when it was passed round at the meeting, as he says it was.

But finally, on this head, the testimony of this witness, as to the subsequent proceedings of the rebel agents, clearly corroborates Conover. It is clear, that no steps were taken on the strength of this letter of Davis, in pursuance of the object supposed to be sanctioned by it, for nearly two months afterward. But the witness Merritt states, that he was in Toronto, on the 5th and 6th of April; that on the 6th, he met Harper and several other rebels, and Harper told him they were going to the States, and were going to kick up the damndest row that had ever been heard of yet, and afterward

said, that if he [the witness] did not hear of the death of Old Abe, of the Vice-President, and of General Dix in less than ten days, he might put him [Harper] down as a damned fool. He afterward ascertained that Harper had in fact left on the 8th of April for the States.

Now, it will be remembered that, according to Weichmann, Surratt passed through Washington on the 3d of April for Canada, where he probably arrived on the 5th, and that, on the 6th or 7th, according to Conover, Jacob Thompson spoke of the dispatches carried by him as conveying the needful authority. This fact could easily be communicated, by telegraph to the rebels in Toronto, and there is a perfect correspondence between their declarations and actions, on the 6th of April and after, and Conover's story, that the sanction of the Richmond authorities to the assassination scheme was communicated, for the first time, in the dispatches carried by Surratt to Canada, about the 5th of April. Thus, in the end, there is seen to be a substantial accord between all the three witnesses, on the important question, when the formal sanction of the Richmond authorities was received in Canada, and when, consequently, for the first time, they were in a condition to give their formal and official approval to the proposed assassination.

By whom the proposition was originally made to Thompson is involved in profound mystery, or, at most, is left to conjecture. If it came from Booth, both his conduct and that of the rebel band in Canada show that it was a mere offer, unaccepted, unacted upon, and that its acceptance, and the granting the authority it invited, was an open question, from the month of December to the 5th of April. Booth was reported to have been in Canada in the fall, and as late as December last, but since that time none of the testimony shows any immediate intercourse between him and the rebel emissaries there. And although Harper, Caldwell, and Randall, and Ford are mentioned by Merritt, as parties whom he understood to be implicated in the plot, we hear of no stir or activity among them until the 6th of April. It seems, there-

fore, very clear, upon this testimony, that this date was the earliest period at which any positive design was formed for the assassination.

The testimony of Mrs. Mary Hudspeth may seem to conflict with this theory, and, therefore, requires some examination. That she is sincere in her statements, I have no reason to doubt; but that she is mistaken seems to me very probable. In the month of November last, she saw two strangers, whom she had never met before, and has never met since, in a street car in New York city, one of them disguised by false whiskers. Some six months afterward, she is shown a photograph taken of Booth, without disguise, and undertakes to recognize it as that of one of the persons in question. This is one improbability in her story. Again, she represents that they had an earnest conversation, one stating that he would leave for Washington on the second day after, and the other being very angry that it had not fallen to him to go to Washington; and all this in a car which she represents as crowded—a second improbability, if the conversation was serious. Next, these important letters are dropped carelessly on the floor and left there. The conduct of these men would seem to justify the judgment Gen. Dix was half inclined to pronounce on the transaction, viz.: that it was a hoax got up for the Sunday Mercury; particularly, when we consider that, though one of the letters looks in terms to immediate action, yet nothing followed having the remotest reference to the subject matter, for five months afterward.

But let us compare dates. Mrs. Hudspeth says the circumstance she relates occurred on the day when General Butler left New York. Major Eckert says the order to leave New York was sent to General Butler on the 11th of November; that he applied for permission to remain until the next Monday, which was the 14th. The inference would be that General Butler left on the 14th, and that Mrs. Hudspeth's adventure occurred on that day, and, as one of the parties she speaks of was to leave for Washington on the second day after, Wednesday, the 16th, would be the day fixed for his depar-

ture. But a little uncertainty is thrown upon this by the dispatch of General Dix, of the 17th, to C. A. Dana, Esq., in which he says: "The party who dropped the letter was heard to say he would start for Washington on Friday night." This would be the 18th. If, then, Mrs. Hudspeth is correct in saying that one of the parties said he would leave for Washington the day after to-morrow, and so reported to General Dix, and he properly understood her, it must have been on Wednesday, the 16th, that the meeting in the car occurred, and either her recollection is at fault, as to date, or General Butler left on the 16th instead of the 14th. At all events, we are safe in fixing either the 14th or 16th as the date of the occurrence; no evidence points to any other date. Now, if we turn to the testimony of Mr. Bunker, clerk of the National Hotel, we will find that Booth arrived in Washington and registered at that hotel on the 14th of November, and left again on the 16th.

If he arrived here on the 14th, he could not possibly have been riding in a street car in New York, at an hour when the brokers' offices were open, to one of which Mrs. Hudspeth was then going with some gold, and the fact is also inconsistent with the declaration made by the party at the time, that he was to leave for Washington two days after; and again, if Booth started from Washington on the 16th, as the National Hotel book shows he did, it was equally impossible for him to have had the pleasure of Mrs. Hudspeth's company, in the street cars of New York, on the same day in business hours; for even Sir Boyle Roche declared that nothing could be in two places at the same time, except a bird. I conclude, therefore, that this was a case of mistaken identity, like others which have been developed in the course of this trial—that Mrs. Hudspeth is wholly mistaken in identifying Booth as the person encountered by her in the car; and if this be so, then her evidence does not point to anybody now under accusation, and is wholly immaterial; and if it further be judged probable, as it seems to me to be, that the occurrence testified to was designed merely to mystify the public, its value as evidence in this case, of course, falls below zero.

But if the letter found by Mrs. Hudspeth had a serious character, and the individual who dropped it was really Booth, what then? It says, among other things, "The English gentleman, Harcourt, must not act hastily—remember, he has ten days." Again, "Do anything but fail, and meet us at the appointed place within the fortnight." Whatever the plot darkly alluded to, its complete consummation within ten days or a fortnight is clearly contemplated. Now, this is no such conspiracy as the present charge is intended to embrace; for the evidence for the Government shows that the rebel authorities, at a much later period, had not incited and encouraged or even approved formally any plot of assassination, but instead, that the proposition had been made to them and was only held under advisement. No such plot had been sanctioned by them in November, and it is such a plot only that this charge deals with. If there really was any such plot as the letter hints at, it evidently failed and was abandoned, for it was to be consummated within ten days. Nothing was done in furtherance of the design, and in December we find Booth, according to Cleary's information to Montgomery, again in Canada.

Again, it does not appear from the evidence, as far as I remember, that as early as November, Booth was even acquainted or had any intercourse with Payne, Atzerodt, Herold or Surratt, who are evidently considered by the Government his principal accomplices in the crime which is the subject of this charge. On the contrary, it is shown, as to Surratt, by the Government witness, Weichmann, that Booth was only introduced to him on the 15th of January last. If, therefore, the letter found by Mrs. Hudspeth tends to show any conspiracy existing as far back as November, looking to the murder of the President, it must have been a conspiracy wholly different from that with which these accused are charged—one which wholly failed or was abandoned immediately; and, therefore this evidence is not inconsistent with the theory I have announced, that there was no active, living, breathing conspiracy in February or March, or until April, and no de-

termination by any one, connected with any conspiracy, to assail the life of the President or of other heads of Government. This, then, I take to be incontrovertibly established by the evidence on the part of the Government.

But in the interval between the proposition said to have been made in or before January, 1865, to the rebel agents in Canada, to assassinate the President and others, and the formal sanction to the scheme in April, what was brewing?

It is evident that in this interval Booth was revolving and maturing another project, of an entirely different character; one which, as between two hostile nations, was perfectly legitimate, and involved no breach of the law of nations, and one which the Confederate authorities had as much right to attempt as they had to do anything within the scope of belligerent rights, and one to which the special sanction of the Richmond authorities was wholly unnecessary. That was the capture of the President, and, perhaps, others, and their abduction to Richmond, with a view of forcing an exchange of prisoners. The scheme, though not innocent, might almost be called harmless, from its perfect absurdity and impracticability. But Booth had become possessed with the idea, and was a monomaniac on the subject. He would admit no difficulties, and, like a madman, sought to dragoon his friends into the scheme with threats of ruin and even death. All this is proved by the testimony of the Government witness, by Booth's declarations, made in the prosecution of his design, in the very act of enlisting adherents for his project, or rather, I should say, of conscripting them, for cajolery was less a means and instrument, than threats, of effecting his object.

Samuel Knapp Chester testifies that about the 24th or 25th of November, Booth took a walk with him in New York, and told him he had a big speculation on hand, and some time after repeated the statement; that still later Booth wrote to him from Washington that he was speculating in farms in Lower Maryland, in which he was sure to coin money, saying that the witness must join him; that late in December or early in January, he walked with the witness in an unfrequented por-

tion of Fourth street, in New York, and there disclosed the nature of the great speculation he was engaged in; that it was a large conspiracy to capture the heads of the Government, including the President, and to take them to Richmond. He assigned to Chester the part which he wished him to perform, threatened to implicate him in it anyhow, and that if he attempted to betray the plot he would be hunted down through life. Subsequently, in January, Booth wrote several times to Chester, and remitted money to him, urging him to come to Washington. Still later, he saw Chester in New York in February, and repeated his solicitations, and spoke of his efforts to engage one John Matthews in the enterprise, saying that he would not have cared if he had sacrificed him, in consequence of his refusal to join him, as he was a coward, and not fit to live—all which indicates the insane state of Booth's mind on this subject. Subsequently, the witness states, Booth told him he had given up the particular project of capturing the President and heads of Government, and that it had fallen through in consequence of some of the parties backing out. Still later, he informed him that in consequence of this, he was selling off the horses he had bought for the purpose. When was this project given up? The witness thought he was so informed in February, but we shall see that he was mistaken in the month, both by the date of the sale of the horses and the date when some of the parties backed out. Who were the parties that backed out? Booth did not give their names, but this omission is supplied by the statement of Arnold, made after his arrest, which was elicited from the Government witness, Eaton G. Horner. From this it appears, that on the 1st of April, Arnold went to Fortress Monroe to accept a situation. Some time before that—the witness can not remember whether it was a week or two or three weeks—he attended a meeting in Washington, in reference to the projected capture of the President, in order to take him South, and thereby compel the Government to make an exchange of prisoners. Arnold declared that he would withdraw from the scheme unless it was effected that week, whereupon Booth threatened to

shoot him. Arnold considered the scheme impracticable, and did withdraw, and had nothing more to do with it, and Booth told him to sell the arms that had been furnished him, or do what he chose with them. It has been proved, by Mrs. Van Tyne, that Arnold gave up his room at her house about the 18th of March, and by other witnesses, as we shall hereafter see, more at large, that he left Washington finally on or before the 20th of March. So that, according to his confession, he was the party, or one of the parties, who backed out from this insane scheme of capture, and it must have fallen through and been abandoned somewhere about the middle of March. This is corroborated by other evidence. Weichmann shows that on a certain day, which at first he could not fix with certainty, vacillating between the 18th and 25th, but which he finally fixed to be the 16th, Booth, Payne and John Surratt came into Mrs. Surratt's in a state of great anger and excitement, and Surratt exclaimed, "My prospects are gone, my hopes are blighted; I want something to do. Can you get me a clerkship?" Booth and Payne manifested similar excitement, and all three went off together. On Surratt's return he informed the witness that Payne had gone to Baltimore and Booth to New York. By the hotel register it appears that Booth did leave on the 21st. All this demonstrates that at this time some mysterious schemes of theirs had failed. The sale of the horses is another circumstance. Surratt had told Weichmann that he had two horses, which he kept at Howard's stable, which Booth afterward told him were his. From the testimony of Brooke Stabler, who kept Howard's stable, it appears that on the 29th of March, Booth paid the livery of these horses for the month, and that Atzerodt, who had been allowed before the use of the horses, took them away on the 31st, and shortly brought them back, at different times, separately, for sale. This, then, was about the period when Booth must have informed Chester he was selling off his horses, and the backing out of parties to the abduction scheme, and its consequent falling through and abandonment must have been shortly before, and about the middle of

March. We shall see hereafter that Booth still clung to this project all through the month of March, and made one or two spasmodic efforts to rally his forces, but without success. The abandonment and failure were complete about the middle of that month. On the 1st of April, Booth went to New York and was there a week, evidently having then finally abandoned the scheme of capture. According to Conover, this scheme of capture had been talked of in Canada in the month of February. It is probable, however, that it was deemed too impracticable to attract much attention. In fact, its failure might easily have been predicted. It was only necessary for the parties concerned to assemble and arrange to put it in motion, for the whole thing to fall to pieces, and this was exactly the result of the first general meeting of the conspirators. But Booth adhered to it with the infatuation of a half insane man, which both his original conception of and his mode of prosecuting this scheme, prove to have been.

But suddenly the scenes are all shifted, and the curtain rises upon a new drama, a bloody tragedy. On the 3d of April, during Booth's absence, John H. Surratt arrives in Washington with these ominous dispatches from Richmond, freighted with doom to the unconscious victim of all these contrivances, and with ruin and infamy to all the authors of his fate. Booth was then in New York. Bunker shows that he left the National on the 1st, and Chester saw him in New York on the 7th. Surratt started for Montreal, and probably saw Booth on the way, or else he received news from Canada after Surratt's arrival there; for he came to Washington on the 8th, and the hellish plot of murder must have been concocted, and all its details arranged by him, between that time and the moment of its execution. In its execution, not a single trace is seen of any of the Canadian rebels, nor is there the slightest ground furnished by the evidence, for believing that more than three or four persons, besides Booth himself, were immediately concerned in the commission of the crime.

Now, what part had Arnold or O'Laughlin in the final

tragedy? As to Arnold, the matter seems to plain for doubt or argument. Mrs. Van Tyne shows that he gave up his room at her house about the 18th or 20th of March. His brother, William S. Arnold, met him on the way to his house, in Hookstown, on the 21st, where he remained till Saturday, the 25th. On the afternoon of that day, he went to Baltimore with the same brother, supped with him, and slept in the same room with him, and returned with him to the country on the following morning. He there remained until Tuesday or Wednesday, the 28th or 29th, when he returned to Baltimore, and on the way stopped at the house of another witness, Miss Minnie Pole. On the 30th and 31st, Thursday and Friday nights, he was at his father's house, and his brother, Frank, slept with him, William also sleeping in the room, on Friday night. On Saturday morning he went to the country with his brother, returned in the middle of the day, and on the same afternoon went to Fortress Monroe. He had previously made application by letter for a situation there. The testimony of his brother, as to his stay in the country, is confirmed by that of Jacob Smith, a neighbor. Then it appears from the testimony of Mr. Wharton, who employed him as clerk, and of Charles B. Hall, a fellow-clerk, that he was constantly in the store at Fortress Monroe, in daily attendance, and faithfully discharging his duty, from the time of his arrival, the 2d of April, to the 17th, the date of his arrest. It was, therefore, physically impossible for him to participate in the murder or assaults in Washington. Nor is there the slightest evidence, or even pretense, that he had any part to perform, in the execution of the deadly plot, at Fortress Monroe, or was otherwise engaged there, than in the peaceful duties of his clerkship.

The case of O'Laughlin is equally free from doubt. The specific charge against him is, that, in pursuance of the general design of the conspiracy, he did, on the nights of the 13th and 14th of April, lie in wait for General Grant, with intent then and there to murder him; and the whole evidence on the subject shows a mistake of identity that would be ridiculous but for the serious consequences it involves to the accused.

On the evening of the 13th a large crowd assembled in front of Secretary Stanton's, in compliment to him and General Grant. About half-past ten o'clock, and while the crowd were still there, according to Mr. David Stanton and Major Knox, a stranger inquired of the latter where the Secretary was, and afterward lounged into the hall and peered into the parlor, and, on being questioned by Mr. David Stanton, repeated his inquiry, and being told that the Secretary was on the steps, and being requested to leave, quietly walked out. Neither of these witnesses has any recollection that General Grant was inquired for at all. Why the Government, with this information, did not charge the lying in wait to have been for Secretary Stanton, is a matter of astonishment. The whole evidence applicable to General Grant is that of Mr. Stanton's messenger, John G. Hatter, who simply relates that about nine o'clock, or a little after, a man approached him, on the step, and inquired for Grant, and, on being told that he could not see him, walked off. This was probably some half-intoxicated and, perhaps, half-demented stranger, who was actuated by the same curiosity that brought a large part of the crowd assembled there on that occasion, and, but for the tragedy of the next night, the circumstance would never have been thought of again. But when the President was shot, Mr. Seward was assaulted, and the Vice-President apparently waylaid, it naturally occurred to every one that the members of the Cabinet had probably all been exposed to the common danger, and the affair of the mysterious stranger's visit was recalled, and when Booth was discovered to be the assassin of the President, and his associates were arrested, these witnesses went to examine them with a natural suspicion of finding among them a would-be assassin of Secretary Stanton or General Grant. Mr. David Stanton recognized O'Laughlin as the man on the monitor, although he says he had a very indistinct view of him, because it was so dark. Major Knox and Hatter visited him in prison, and both under the same conviction that the person seen at Mr. Stanton's must have had something to do with the conspiracy, undertook to identify the accused as the

man. Two of these witnesses describe his coat as a black dress coat, and one as a frock; all say he had black pants. None of them had ever seen the individual before.

This is only one of several instances of mistaken identity exhibited in the trial. Dr. Merritt located Herold in Canada, where he never was in his life, from the 15th to the 20th of February, when he was clearly proved to have been here on both those days, collecting rent, and signing his own name to the receipts. The same thing occurred in regard to Dr. Mudd, whom Evans swears to having seen in Washington on the 1st, 2d or 3d of March, whereas, he is proved to have been many miles distant on each of those days.

But this whole story about the lying in wait for General Grant is blown to the wind by the testimony of the defense. Let us trace the accused by the light of this testimony. In the first place, he was invited, with two others, Murphy and Early, by Ensign Henderson, to come to Washington, on Thursday, the 13th of April, the occasion of the general illumination. This is sworn to by all three of these parties. They arrived in Washington between five and six o'clock, and first stopped at Rullman's Hotel. While one of the company stopped to be shaved, the accused went with Early to the National Hotel, and there inquired for some person and, perhaps, went in search of him, but returned to the door in from three to five minutes. This is proven by Early. The accused stated to Henderson afterward that he had been to see Booth, but not whether he had seen him; and there is no proof that he had, but the contrary is sufficiently shown by the short time spent in the hotel. The accused and Early then returned to Rullman's before Henderson had finished shaving, and there rejoined him and Murphy. This is sworn to by all three—Murphy, Early and Henderson—and Murphy says that Early and the accused were not gone more than five or six minutes. They then lounged up Pennsylvania avenue, and went into Welcher's saloon. These details are given by both Early and Murphy, and though Henderson is more general, he confirms them, as to the accused having been in company, all the time with these parties.

Leaving Welcher's about eight o'clock, they returned to Rullman's and were shortly joined by Daniel Loughran, who is now added as a fourth witness. The whole party of five then strolled up Pennsylvania avenue to look at the illumination. They all agree as to having passed Seventh street. Those not residing here, and not familiar with the streets, speak only of going a little beyond Seventh, but Loughran, who resides here, fixes the end of the walk at Ninth street, and all agree that they did not go beyond it. They then turned back. Henderson, Early and Loughran all fix the hour of this movement to be nine o'clock, about. Loughran looked at his watch, because he wished to go as far as the Treasury and some of the party remarked that it was too late. They then went to the Canterbury Music Hall, and remained about an hour or three-quarters, which brought them to about ten o'clock. All four swear that O'Laughlin went there with them, and remained with them, and returned with them to Rullman's, after stopping at the Metropolitan about ten o'clock—a little sooner or later. There they remained from half an hour to an hour. At half-past ten Grillet passed with a lady, and shortly after eleven o'clock returned, found them in the same place, and joined them. He, Early, Murphy and Loughran mention the circumstance, and this brings a fifth witness on the stage. In addition to these, Purdy, the manager, and Giles, the bartender of Rullman's Hotel, both swear that he was at the hotel, one fixing the hour at about ten, and the other at about half-past ten, and remained with the other parties until after eleven. Here, then, are seven witnesses, of whom four swear they were in company with the accused at the hour fixed by Hatter of his waylaying General Grant at Mr. Stanton's, and all the evening afterwards, and that they were not for a moment nearer to Mr. Stanton's than a point which must be a full mile distant, and their testimony is added to by three other witnesses, making seven, who locate the accused still farther off from the scene of his supposed murderous designs, between the hours of ten and eleven o'clock, when the other Government witnesses profess to have seen him. Six of the

party were with the accused until between twelve and one o'clock that night, and the casual accessions to the company having left, the accused, Henderson, Murphy and Early, according to their concurrent testimony, retired at the Metropolitan Hotel toward two o'clock in the morning. On Friday morning the accused was roused by Early and Henderson. The same party of four breakfasted at Welcher's, and strolled on the avenue to the National Hotel, and entered there about nine o'clock. There the accused went upstairs in search of Booth, and, as he did not return for some time, a half or three-quarters of an hour, the party left, thinking he might have gone to Rullman's. Not finding him there, they returned to the National, and sent up their cards to Booth's room, but no one was there. The cards being left at the office, they returned to Rullman's, where they were joined by the accused in about an hour. This would be in the neighborhood of eleven o'clock, and the accused then stated to Henderson that he had not found Booth, that he was out. All the rest of the morning the accused was in company with all three of his friends, and, in the afternoon, he only parted with the others, to go with Early, between four and five o'clock, to visit a lady. Early speaks fully of this, and Henderson says he was with the accused all day, except a part of the afternoon, when he went off with Early. Early and the accused paid the visit, and returned about six o'clock, and rejoined the others at the hotel (Rullman's). So Early states, and Henderson confirms it, and Murphy states that he was with them until eight o'clock, when they went to supper, and he parted with them until next day. Meanwhile, Early, Henderson and the accused went to Welcher's to supper, and returned to Rullman's, where they remained until after the news of the President's assassination. Early does not remember how late this was, and does not remember the hour of O'Laughlin's leaving there with Fuller; but Grillet, Purdy, Henderson, Fuller and Giles all swear that O'Laughlin was at Rullman's, in their company, when the news of the President's assassination reached there. It was communicated to O'Laughlin and the others by Purdy, who

had heard it at the door. Shortly after O'Laughlin left Rullman's, in company with Fuller, who had been in his brother's employ, and, on his invitation, he spent the night with him. Early on Saturday morning the accused joined the same party, and was with them until their departure for Baltimore, in the afternoon train, as testified by Early and Murphy.

Now, to return to Thursday evening. One Government witness fixed nine, and the other two, half-past ten o'clock, as the hour at which the accused was seen lurking about Mr. Stanton's. As to the first hour, we have four, and as to the second hour, the same, with three others, making seven respectable witnesses, of different pursuits, casually meeting, and in no wise implicated or interested themselves; two of them called by the Government, and so accredited as worthy of belief, and one of these an officer in the United States Navy, and all of them wholly unimpeached, all intimately acquainted with the accused, who establish an alibi beyond the possibility of question. It is physically impossible that they can be mistaken; they cannot be disbelieved without imputing deliberate perjury to them all. It is morally impossible that they can be perjured. On the other hand, nothing is further from impossible, nothing is easier, than for all the Government witnesses to have been mistaken. A minute's view at night of a stranger whom they had never beheld before, furnished them all the knowledge upon the strength of which, weeks after they assumed to identify him in the obscurity of an iron-clad, and the shades of a dungeon. It were folly to dwell longer on the comparison between the two kinds of evidence. But look for a moment at the gross improbability of the story. It is evident that the different parts of this plot were to be executed simultaneously—it was essential to success. It is also evident that Friday night was the first time fixed for its execution. Nothing tends to show any earlier attempt, made or contemplated. On Friday night the murder occurred; on the same night Mr. Seward was assaulted; on Friday afternoon Booth called to see the Vice-President, evidently not to assassinate him then, but to

learn of his whereabouts; and if any such part as the assassination of General Grant was assigned to O'Laughlin, Friday night was the time assigned for its execution. It is evident that if he had made the attempt on Thursday, successfully or not, it would have thwarted the whole scheme, for it would have put every one else on his guard. And the prosecution felt the stress of this consideration, for they have added Friday, the 14th, in the specification, because this was absolutely necessary in order to connect the accused with the actual execution of the conspiracy, although they had not a scintilla of proof to justify it. The story becomes still more improbable when we are required to believe that this small and feeble man ventured, single-handed, into a brilliantly lit house to assault Mr. Stanton or General Grant, or both, where he could hardly fail to be seized, with a crowd at the front to intercept his retreat, and wholly ignorant of the exit by the rear. It may be said that he was then simply reconnoitering for a more favorable opportunity. But the charge is, that he lay in wait on that night with intent, then and there to kill and murder General Grant; and if that is disproved, the whole is disproved, for it has not been even attempted to show waylaying on Friday night, the 14th of April. For this reason it is almost battling windmills to attempt to controvert the part of the charge relating to Friday night. There is nothing to answer or refute. It is sufficient, however, to refer to the evidence already analyzed, which shows that from six o'clock until after the assassination, the accused was quietly engaged with the companions before named, remote from the scenes of blood and danger, until after the whole tragedy was over. General Grant, meanwhile, was far away, although he had been expected and announced to appear at Ford's theater on Friday night, and the change of purpose was probably only known to the conspirators by his actual absence. The accused was not at the theater, nor at Secretary Seward's, nor at the Kirkwood, nor anywhere else where it can be conceived that any part of the massacre was to be performed. No conceivable part in the enterprise can be assigned to him. Indeed, it is evident

that he designed, as the others did, to return to Baltimore on Friday morning, and was only detained by the persuasions of Henderson. Did his conduct indicate any complicity in, or knowledge of, the impending crime? Was he silent, or excited, or nervous, betraying the fatal truth in his cups, bursting with the big and fatal secret which could not be contained? On the contrary, he is represented as in the finest spirits, cheerful, composed, and light-hearted, mingling in the merry revel with his boon companions, evidently all unconscious of the impending evil.

But he went to see Booth on two occasions—Thursday afternoon and Friday morning. It does not appear that he saw him on either; the contrary is rather shown. But suppose he had seen him. The afternoon and the morning visit were both before Booth even knew that the President was to be at Ford's theater on Friday night, for it appears that he only received the information at the theater at noon on that day. Before that hour, O'Laughlin had rejoined his companions, and was not out of the company of some of them the whole day afterward. Now, after Booth learned of the President's arrangements for the evening, and laid his plans for the murder, if the accused had any connection with him whatever in this scheme, why did not Booth go after him, seek him out, and assign him his part? Either he did not know of his presence here, or he did not regard him as an accomplice.

But could the accused really desire better proof of his innocence than the fact of his visit to Booth affords? Can anybody conceive that with the knowledge of the intended murders, still more, expecting to participate in them, he would have gone openly, in a public hotel, to visit the intended leader in the crime, in company with several persons, one of them an officer in the navy, on the very day of the intended attempt? Could such infatuation be imputed to any man in his senses? Would not a guilty man, or one with guilty knowledge only, have sought a covert interview, well knowing that suspicion would attach to every one seen in intercourse with Booth about the time of his crime, and

that the sleuth-hounds of justice would soon be upon his trail?

And when he received the news of the assassination, what was his conduct? Did he betray guilt by agitation, and excitement and flight? Nothing of the sort. He was naturally startled, and the thought naturally occurred, that as he had been intimate with Booth, and had only that morning gone openly to call on him, he might be suspected. But still he betrayed none of the terrors of guilt. He went quietly to sleep at the house or lodgings of a friend. The party had no particular lodgings, and seem all to have scattered that night. O'Laughlin stayed with Fuller. He joined his friends the next morning, and they went quietly home together. On reaching home he was informed that the officers of justice were in search of him. His suspicion, expressed in Washington, was realized, and he found himself involved in trouble. No man—the most innocent—could avoid emotion in some degree, under such circumstances. But his demeanor was wholly irreconcilable with guilt. He absented himself from home that night for a reason that was creditable to him, viz., that his arrest there might be the death of his mother; and no one can believe that a youth governed by these filial sentiments could be so steeped in depravity as to have had any share in the conception or execution of the diabolical crime of Booth. The officers were at his lodgings in search of him on Saturday and on Sunday. On Sunday he informed Murphy of the fact, and stated that he meant to surrender himself on Monday, and on that day he did so, through his brother-in-law, Mr. Maulsby. Throughout, his declarations were that he was innocent of any connection with the crime, and could account for every moment of his time spent in Washington; and that he has done.

It is, therefore, apparent that neither Arnold nor O'Laughlin had anything to do with the execution of the alleged conspiracy, and that they even could not have had any knowledge of the intended murders.

Furthermore, it appears that for nearly a month before the assassination they had no personal intercourse with Booth.

Arnold was in Baltimore and the neighborhood from the 21st to the 31st of March, and from that time at Fortress Monroe. He was not in Washington at all. And though his letter, offered in evidence, would seem to show that Booth had been to see him at his home, it also shows that no interview was had, nor is any correspondence shown, except the letter in question. This letter evidently shows a rupture of former relations with Booth. "When I left you, you stated we would not meet in a month or so." "I told my parents I had ceased with you. Can I, then, under existing circumstances, come as you request?" Such are the terms of the letter. And, in effect, we know that he did not come as requested, but on the contrary, accepted a situation, and went to Fortress Monroe on the 1st of April, and this was the last even of his correspondence with Booth, and this completed and sealed the rupture. As to O'Laughlin, no intercourse of any sort is shown with Booth after the 18th of March. On that day he went home, according to Mr. Maulsby, and remained there with him ever since. Mr. Bunker, who speaks of O'Laughlin's frequent visits to Booth, admits that he did not recollect his coming during the last few days of Booth's stay. Those last few days were the week before the assassination. The previous week Booth was in New York, and could not have been seen here by the accused. Bunker's testimony is so vague as to dates, that it can not be weighed for a moment against the positive testimony of Mr. Maulsby. The same may be said of Streett, who thinks he remembers seeing the accused in conversation with Booth in the streets, well on to the 1st of April, which might have been before his departure on the 18th of March. It is true that Booth telegraphed to him on the 27th to come to Washington on the 29th, but it does not appear that he ever received the telegram, and it is certain he did not respond to or comply with its request. Some time in March it also appears that a letter was sent from Booth to O'Laughlin, but whether in the beginning or end, or what were its contents, is a matter of perfect uncertainty, as it is, also, whether he ever noticed it. On O'Laughlin's own part, no single act of intercourse is shown,

between March 18th and April 13th, when he came to Washington, evidently in the most complete and happy ignorance of the mischief that was brewing.

If, then, Arnold and O'Laughlin ever were connected with Booth in a conspiracy for any object, before the middle of March, it is clear that, about that time, they wholly withdrew from and abandoned it, while it was wholly unexecuted, if not merely in embryo. And this being the case, according to the principles heretofore laid down, they were not parties, in law or in fact, to any act subsequently done.

But let us see what evidence there is to connect them with any conspiracy.

First, as to O'Laughlin. I maintain that there is no competent legal evidence to show him implicated in any conspiracy whatever. Throw out of the case the confession of Arnold, and any statements made by him casually to third persons—which, I shall show, are not evidence against O'Laughlin—what remains? No one can pretend that there is any direct evidence. If any, it is circumstantial. A conspiracy may be proved by circumstances, but by what kind of circumstances? Russell on Crimes, 2 vol., p. 698, says:

"The evidence in support of an indictment for a conspiracy is generally circumstantial; and it is not necessary to prove any direct concert, or even any meeting of the conspirators, as the actual fact of conspiracy may be collected from the collateral circumstances of the case." "If, therefore, two persons pursue, by their own acts, the same objects, often by the same means, one performing one part of the act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object they were pursuing, the jury are at liberty to draw the conclusion that they had been engaged in a conspiracy to effect that object. In a case where a husband and wife and their servants were indicted for a conspiracy to ruin the trade of the prosecutor, who was the king's cardmaker, the evidence against them was that they had, at several times, given money to the prosecutor's apprentices to put grease into the paste, which had spoiled the cards; but there was no account given that ever more than one at a time was present, though it was proved that they had all given money in their turns; it was objected that this could not be conspiracy, on the ground that several persons might do the same thing without having any previous communication with each other. But it was ruled that the defendants being all of a family, and concerned

in the making of cards, it (i. e., these acts done in pursuance of a common object) would be evidence of a conspiracy."

Now, it is evident in this case, that the mere fact of belonging to this family, and even being concerned in the same trade, would not have begun to be evidence to implicate any one. It was the doing of acts in pursuance of the common end, which was the circumstantial proof admitted, aided by showing a common motive.

Now, in the case under trial, what single act or declaration of O'Laughlin can be shown looking to any common end or object between him and Booth? Is his personal intimacy adduced? But not only had that no necessary connection with any criminal design, but it is proved that it could not have originated in anything of the sort. They were opposite neighbors in Baltimore, had been schoolmates in boyhood, in the same neighborhood, and between themselves and their families an uninterrupted intimacy had subsisted for many years. If intimacy were any evidence of complicity with Booth, it would hardly be possible to assign any limits to the scope of this conspiracy. His profession, no less than his personal qualities, necessarily made him many acquaintances. Others were more intimate with him than the accused—McCulloch, Wentworth and others, shared his room at the National Hotel. Yet they seem to have attracted no suspicion.

Can the circumstance of O'Laughlin's presence in Washington and his occupying a room at Mrs. Van Tyne's be relied on? It has been shown that he formerly resided in Washington, was in the employment of his brother, then in business here, and that he has constantly had to visit Washington since, to make collections, solicit orders, and deliver merchandise, and that on the very day of his last visit, a month before the assassination, he came down for his brother, upon business, about which he was telegraphed the next day. In this state of affairs, nothing was more natural than that he should occupy a room with a fellow-townsmen, Arnold; but that that had no reference to anything in which Booth or Arnold was concerned, an examination of dates will show. Mrs. Van Tyne does not profess to know anything of the rela-

tions between Arnold and O'Laughlin, nor could she know which of them was actually present in her lodgings at any particular time. But she fixes the beginning of this occupancy on the 10th of February. Now, Mr. Maulsby shows that O'Laughlin was at home on the 14th of February, and remained there two weeks—that is, to the end of the month. So that, as far as appears, he was in Washington but four days during the whole month of February; and, by looking at Bunker's testimony, it will be seen that Booth was absent from Washington at that time. Indeed, he was absent for twelve days before the room was taken at Mrs. Van Tyne's, and so continued, if I understand Bunker's evidence aright, for twelve days afterward. The book shows that he left on the 28th of January, and arrived again on the 22d of February, though there is some confusion on this point. It can hardly be understood, then, how his occupancy of this room could have any reference to schemes Booth was prosecuting here. It certainly had no necessary connection with them, and can not be called as an act done in furtherance of them, without much more proof. Where O'Laughlin was in the beginning of March, is not very clear, but it is certain that he was at home on the 7th, and so continued until the 13th, when he spent five days in Washington. Now, this is everything in the case, in the shape of acts or declarations of O'Laughlin. No man can deny that his intimacy with Booth, and his stay in Washington, were perfectly consistent with utter ignorance of anything illicit in progress, and are fully accounted for on other grounds. He might, for aught that appears, have been guilelessly keeping up a social intimacy with the friends of his boyhood, and Booth may not have whispered his designs to him, as he did not to others equally or more intimate with him. This intimacy, therefore, can not be called an act done in pursuance of the conspiracy, and tending to prove it against O'Laughlin. Consider, moreover, what else has not been proved against him. While the prosecution have sought to show, and will doubtless maintain, that Mrs. Surratt's house was the headquarters of the alleged conspiracy, that John Surratt, Payne, Atzerodt, and perhaps

Spangler and Herold, were the principal accomplices of Booth, they have not shown that O'Laughlin was ever at that house, or was ever known to any of those parties. When arrested, no arms were found on him, nor anything indicating any deadly or illegal purpose, of any kind.

Now, if I am right in my position that no act or word of O'Laughlin himself has been shown, nor any independent fact, connecting him with any conspiracy, then it is very plain that no act or declaration of any third person is competent evidence against him. The rule of law, under this head, is too plain to be misunderstood.

The fact of conspiracy between A and B can never be proved against A by the mere declarations of B; but if it once be proved by the declarations or acts of A himself, then B's declarations, accompanying some act done in furtherance of the common design, would be evidence, but they would not be evidence if made casually, or after the conspiracy is either executed or abandoned.

Thus Professor Greenleaf says (Vol. I, Sec. III):

"The same principles apply to the acts and declarations of one of a company of conspirators, in regard to the common design, as affecting his fellows. Here a foundation must first be laid by proof sufficient, in the opinion of the judge, to establish, *prima facie*, the fact of conspiracy between the parties, or proper to be laid before the jury, as tending to establish that fact. The connection of the individual in the unlawful enterprise being thus shown, every act and declaration of each member of the confederacy in pursuance of the original concerted plan, is, in contemplation of law, the act and declaration of them all," etc. "Sometimes, for the sake of convenience, the acts and declarations of one are admitted in evidence, before sufficient proof is given of the conspiracy, the prosecutor undertaking to furnish such proof of conspiracy in a subsequent stage of the cause. But this rests in the discretion of the judge, and is not permitted, except under peculiar and urgent circumstances, lest the jury should be misled to infer the fact itself, of the conspiracy, from the declarations of strangers. And here, also, care must be taken that the acts and declarations thus admitted be those only which were made and done during the pendency of the criminal enterprise, and in furtherance of its object."

If they took place at a subsequent period, and are, therefore, merely narrative of past occurrences, they are, as we have just seen, to be refused.

And, as Russell says (v. 2, p. 697):

"But what one of the party may have been heard to say at some other time, as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it is conceived, be admitted as evidence to affect them, on their trial for the same offense."

It is clear, then, that Arnold's oral confession is not admissible against O'Laughlin, for two reasons, viz.: first, because no conspiracy between them had first been proved by other evidence; and next, because it was not made in furtherance or prosecution of any conspiracy, but as to a past transaction. It is pure hearsay, inadmissible because of the double chance of mistakes—mistake in the witness as to the third person's declarations, and mistake of the third person himself. The same is to be said of casual remarks made by him to third persons, as to the nature of his or their business, not made in the prosecution and furtherance of that business.

On the same principle, neither could any act or declaration of Booth be evidence against him. We have nothing of this sort but the sending of a letter, the contents of which are entirely unknown, and the sending of the telegrams of March 13 and March 27, asking him to come to Washington. But without proof of conspiracy, from another source, this would be inadmissible against O'Laughlin. Otherwise, it would be in the power of any man to ruin an enemy, by writing to him or telegraphing to him in terms which assumed the existence of some guilty plot between them; and these acts are consistent with the theory of a mere attempt to persuade him into a conspiracy, which he would not yield to. If, then, these acts of Booth, and declarations of Arnold be rejected as evidence, the case is utterly bare of proof against O'Laughlin of any conspiracy whatever.

But suppose all these acts and declarations admitted, let us see what they prove; and in considering them, I treat the cases of Arnold and O'Laughlin together.

If I have been correct in my analysis of the proof, I have shown, that no active design against the life of the President was on foot, between January and the early part of April; and I have further shown, from the evidence of the Government, that during that interval, Booth was contriving an entirely different project—the capture of the President and others. It has further appeared that that project was abandoned, and the date of its abandonment is fixed about, by facts referred to by Booth, to-wit: the defection of some of the parties, the sale of horses, etc., and that date is ascertained to have been about the middle of March.

Now, it is clear, that if any connection is shown between Booth on one hand, and O'Laughlin and Arnold on the other, it existed only during the period when this absurd project of capture was agitated, and terminated with that. Their fitful stay in Washington was only between February 10 and March 18. By Arnold's confession, it would appear that he, and if he is not mistaken, O'Laughlin, attended one meeting about the middle of March, to consider the plan of capture; but so immature was the plan, and so slight his connection with it, that he did not even know the names of the others at the meeting—two in number—besides Booth, Surratt and Atzerodt. At that meeting, as might have been expected, the difficulties of the scheme became apparent, and a rupture ensued between him and Booth; the whole scheme fell through, and he and O'Laughlin, immediately after, left for Baltimore. Booth told him he might sell the arms he had given him; and, in fact, it is proved that he gave part of them away, shortly after, to his brother. As to O'Laughlin, this confession proves nothing but his presence at this single meeting. This was the beginning and the end of their connection with Booth in any scheme whatever of a political character; and, in this, it is evident that he was the arch-contriver, and they the dupes. And when they had once escaped his influence, although he still evidently clung to his design, and telegraphed and wrote, and called to see them, it is evident that they refused to heed the voice of the charmer, charm he never so wisely. From O'Laughlin he received no response at all; from Arnold,

only the letter offered in evidence. There are expressions in the letter which look to a contingent renewal of their relations in the future; but they were employed to parry his importunities for the present. Certainly, all connection ceased from that time.

If, therefore, any conspiracy at all be proved, by the utmost latitude of evidence, against these two accused, it was a mere unacted, still scheme, scarce conceived before abandoned, of a nature wholly different from the offense described in this charge, the proof of which does not sustain this charge, and of which the accused could not be convicted upon this trial; for this Court, as we have seen, is bound by the rules of evidence which prevail in others, and one of the most important is, that the proof must correspond with the charge or indictment, and show the same offense, or the accused is entitled to acquittal.

And there is no evidence which connects these two accused with that dreadful conspiracy which forms the subject of this charge. There is nothing to show that during their brief intercourse with Booth, in Washington, that nefarious design was agitated at all, certainly none that it was even disclosed to them; and if such conspiracy had any existence, it was in a state of slumber and suspense, awaiting that sanction without which it had no motive, nor end, nor aim, nor life.

I state, then, the following conclusions as established, viz.:

1. That the accused, Samuel Arnold and Michael O'Laughlin, had no part whatever in the execution of the conspiracy set forth in this charge and its specification.

2. That if they were implicated in such conspiracy, they withdrew from it and abandoned it while yet wholly unexecuted, and resting merely in intention, and are not responsible for any of the acts subsequently done in pursuance of it.

3. That there is no legal and complete evidence implicating O'Laughlin in any conspiracy whatever, and none implicating either O'Laughlin or Arnold in the conspiracy charged.

4. That if there is evidence against them of any conspir-

acy, it is of one wholly different from that set forth in the charge and specification, and upon these they must be wholly acquitted.

I, therefore, claim for them an absolute and unqualified acquittal. That the accused were wrong in ever joining the rebellion against their Government, no one will deny; that they were wrong in ever listening for a moment, if they ever did, to any proposition from that wicked schemer, Booth, inimical to their Government, no one will deny. But it would be to insult the intelligence of this Court to waste time in showing that this Court are not sitting in judgment on all the errors in the lives of these accused, but to decide the single question whether they are guilty of conspiracy to kill and murder the President, Vice-President, Secretary of State, and General in command of the armies of the United States, and of the acts charged against them severally in pursuance of said conspiracy.

And now, Mr. President and gentlemen, with all the sense of responsibility the occasion is fitted to inspire, I commit to you the lives, liberties and good names of my clients, to be dealt with by you according to the law and evidence, without partiality, favor, or affection.

THE TRIAL OF EDWARD SPANGLER FOR CONSPIRACY AND MURDER, WASHINGTON, A. D. 1865.

THE NARRATIVE.

Edward Spangler^a was a stage hand at Ford's theater, employed to assist in shifting scenery in its place as the necessity of the play required. These were his duties at night, but during the day he did some of the rough carpenter work incidental to plays to be produced. He had been in the service of John T. Ford at the theater for four years at intervals and the last two years continuously. He was always regarded as a very good-natured, kind, willing man. At times he drank to excess which had a tendency to make him vicious and unfit him for work.¹

Spangler seemed to have a great admiration for J. Wilkes Booth. Booth's peculiar, fascinating manner appealed to the lower class of people such as Spangler belonged to. Spangler was a man without self-respect. He took his meals at a boarding-house and rarely slept in a bed; he usually slept in the theater. As he was considered a very harmless man, by the company around the theater, he was often the subject of sport and fun.² During the awful scene at the theater, Span-

^a Edward Spangler was a middle-aged man with a large unintelligent face, swollen evidently by intemperance, a low forehead, gray eyes and brown hair. He was born in the interior of Pennsylvania, where he had respectable connections. He considered Baltimore his home, having buried his wife there a year previous to the assassination. He usually spent his summer months, during the vacation of the theater, chiefly at crabbing, at which he was considered an expert. He does not appear to have been in the conspiracy at an earlier period than a few hours before the commission of the crime. Oldroyd.

¹ John T. Ford, p. 385.

² John F. Sleichman, p. 78.

gler appears to have been Booth's right-hand man. He was called out to hold Booth's horse in the alley, but as his presence was needed upon the stage, he told a boy by the name of Joseph Burroughs to hold the horse, Spangler returning to his place on the stage.³ It was alleged that Spangler prepared the bar which Booth placed in the wall and against the door to prevent entrance to the box from the audience. And a scene-shifter at the theater swore on the trial that when he saw Booth run across the stage he followed him to the door, and after seeing him escape through the alley, came back to his place in the wings, where Spangler struck him in the face with the back of his hand, saying: "Don't say which way he went."⁴

Spangler had been a sort of general servant to Booth, taking care of his horse and stable and doing his errands.⁵ Other evidence at the trial strongly implicated him as the active agent in aiding Booth to make his escape from the theater after the murder.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,⁶ *President.*⁷

May 13.

The charge against *Edward Spangler* was that he was (1) a member of the general conspiracy; (2) that he aided Booth to obtain entrance to the box in the theater in which President Lincoln was sitting "and in barring and obstructing the door to prevent assistance coming to him," and (3) that he did aid, abet the said Booth in making his escape after the murder.⁸ Having previously pleaded *not guilty*⁹ the taking of testimony began today.

³ Joseph Burroughs, p. 78.

⁴ Jacob Ritterspaugh, p. 381.

⁵ John T. Ford, p. 385.

⁶ *Ante*, p. 34.

⁷ For the other members of the Commission, see *ante*, p. 33.

⁸ See *ante*, p. 38.

⁹ *Ante*, p. 40.

Judge Advocate General *Holt*¹⁰ and Assistant Judge Advocates *Bingham*¹¹ and *Burnett*¹² for the Government.

Thomas Ewing, Jr.,¹³ for the Prisoner.

THE TESTIMONY AGAINST EDWARD SPANGLER.

Jacob Ritterspaugh. Know prisoner, Edward Spangler. He boarded where I did, at Mrs. Scott's, on the corner Seventh and G; had no room in the house; took his meals there, and slept at the theater; used to keep his valise at the house; when the detectives came I gave it to them; do not know what it contained; am commonly called Jake about the theater.

Was a carpenter in Ford's theater the night the President was shot. My business was to shift wings on the stage, pull them off, and fetch things out of the cellar.

Was standing behind the scenes when some one called out that the President was shot, and directly saw a man that had no hat on running toward the back door.

He had a knife in his hand; ran to stop him, through the last entrance, and as I came up to him he tore the door open. I made for him; he struck at me with the knife and I jumped back. He then ran out and slammed the door shut; went to get the door open quick, and it was kind of fast; could not get it open; a moment afterward I opened the door, and the man had just got on his horse and was running down the alley; then I came in, back on the stage

where I had left Spangler, and he hit me on the face with the back of his hand, and said, Don't say which way he went; asked him what he meant by slapping me in the mouth, and he said, For God's sake shut up; that was the last he said; did not see any one else go out before the man with the knife. A tall, stout man went out after me.

Cross-examined. When I heard the pistol fired, was standing in the center of the stage, listening to the play, and Spangler was at the same place, just about ready to shove off the scenes; I stood nearest the door; did not at first know what had happened. Some one called out Stop that man; then heard some one say the President was shot. When I came back, Spangler was at the same place I had left him. There was a crowd there by that time, both actors and strangers. When Spangler slapped me there were some of the actors near who had taken part in the play; one they called Jenny, standing three or four feet from me; do not know whether she heard what he said; he did not say it very loud; he looked as if he was scared, and a kind of crying; heard the people halloo, Burn the theater! Hang him and shoot him! did not

¹⁰ *Ante*, p. 35.

¹¹ *Ante*, p. 35.

¹² *Ante*, p. 36.

¹³ *Ante*, p. 41.

tell a number of persons what Spangler said when he slapped me; did not tell either of the Messrs. Ford; told it to nobody but Gifford, the boss. At Carroll Prison, the same week I was released, I told him that Spangler said I should not say which way the man went; told a detective that Spangler hit me in the mouth with his open hand. Have no recollection of telling any one else, though I might have said something at the table and the rest might have heard.

Saw Booth open the back door of the theater and shut it, but did not know who he was then; did not see his face right; was the first person that got to the door after he left; opened the door, but did not shut it. The big man that ran out after me might have been five or six yards from me when I heard him, or it might have been somebody else, call out, Which way? I cried out, This way, and then ran out, leaving the door open. By that time the man had got on his horse and gone off down the alley; saw the big man outside, and have not seen him since. It was Spangler's place, with another man, to shove the scenes on; he was where he ought to be to do the work he had to do; did not hear any one call Booth's name. It was not till the people were all out, and I came outside, that I heard some say it was Booth, and some say it was not. Spangler and I boarded together; we went home to supper together on the evening of the assassination, at 6 and returned at 7.

William Eaton. Arrested the prisoner, Spangler, at his board-

ing house the next week after the assassination; did not search him; my orders were to arrest him.

Charles H. Rosch. After the arrest of the prisoner, Spangler, went with two of the Provost Marshal's detectives, to the house northeast corner of Seventh and H streets, where he took his meals; we inquired for his trunk, were told he kept it at the theater; the man at the house handed us a carpet-bag, in which we found a piece of rope measuring eighty-one feet, out of which the twist was very carefully taken. The bag was locked. It contained nothing but the rope, some blank paper, and a dirty shirt-collar.

Cross-examined. It was a man called Jake, apparently a German, that told me it was Spangler's bag, and that it was all he had at the house. He said he worked at the theater with Spangler; the bag was right near where Jake had his trunk; the coil of rope I see here now is the same that I took from Spangler's carpet-bag.

John F. Sleichman, see ante, p. 78.

Jos. Burroughs, see ante, p. 78.

Mary Ann Turner, see ante, p. 79.

Mary Jane Anderson, see ante, p. 79.

James L. Maddox, see ante, p. 80.

Joseph B. Stewart, see ante, p. 85.

Joe Simms, see ante, p. 86.

John Miles, see ante, p. 86.

John E. Buckingham, see ante, p. 77.

THE DEFENSE.

C. D. Hess. Am manager of Grover's theater; have been in the habit of seeing Booth very frequently; the day before the assassination he came into the office and entered into a conversation on the illumination of the city that night; asked me if I intended to illuminate; said yes, I should, but the next night would be my great night of the illumination, that being the celebration of the fall of Sumter. He then asked, Are you going to invite the President? My reply was Yes; that reminds me I must send that invitation. I sent my invitation to Mrs. Lincoln. My

notes were usually addressed to her, as the best means of accomplishing the object.

Booth's manner, and his entering in the way he did, struck me as rather peculiar. He must have observed that we were busy, and it was not usual for him to come into the office and take a seat, unless he was invited.

It is customary in theaters to keep the passage-way between the scenes and the green-room and the dressing-rooms clear, but much depends upon the space there is for storing scenes and furniture.

Mr. Ewing asked the position of the box usually occupied by the President on visiting Grover's theater, and the nature of the leap that an assassin would have to make in endeavoring to escape from the box.

The *Judge Advocate* objected.

Mr. Ewing. I wish to show that, from the construction of Ford's theater, it would be easier for the assassin to effect his escape from Ford's theater than it would be from Grover's. The purpose is to show that Ford's theater was selected by Booth as the one where he intended to assassinate the President, and to relieve the employes of Ford's theater, Mr. Spangler among them, from the imputation which naturally arises from Booth's selecting that theater as the one in which to commit the crime.

The COMMISSION sustained the objection.

H. Clay Ford. Was treasurer of Ford's theater; about half-past 11, April 14, my brother, James R. Ford, told me that the President had engaged a box for that night. Booth was at the theater for about half an hour afterward; do not know that the fact of the President's going to the theater that night was communicated to Booth, but think it likely he found it out while there. Mr. Raybold brought him a letter that was there for him. He sat down on the steps and com-

menced reading it. This was about 12 o'clock. He stayed there perhaps half an hour.

Told Mr. Raybold about fixing up and decorating the box for the President that night, but he had neuralgia and I fixed up the box in his place. I found two flags in the box already there, which I got Mr. Raybold to help me put up. Another flag I got from the Treasury Department, the Treasury regimental flag; put this blue regimental flag in the center, and the two American

flags above. There was nothing unusual in the decorations of the box, except the picture of Washington placed on the pillar in the middle of the box. This had never been used before. We usually used small flags to decorate the box; but as General Grant was expected to come with the President, we borrowed this flag from the Tresaury regiment to decorate with.

The furniture placed in the box consisted of one chair brought from the stage and a sofa, a few chairs out of the reception room, and a rocking chair, which belonged to the same set, I had brought from my bedroom.

All that Spangler had to do with the box was to take the partition out. There are two boxes divided by a partition, which, when the President attended the theater, was always removed to make the box into one. Spangler and the other carpenter, Jake, removed it. The President had been to the theater about six times during the winter and spring; three or four times during Mr. Forrest's engagements, and twice during Mr. Clark's engagement.

Did not direct Spangler with respect to the removal of the partition; believe Mr. Raybold sent for him. While we were in the box Spangler was working on the stage.

Spangler knew that the President was coming to the theater that evening, as he assisted in taking out the partition.

In decorating the box I used my penknife to cut the strings to tie up the flags, and left it there in the box.

Three or four times during the

season Booth had engaged box No. 7, that is part of the President's box, the one nearest the audience. He engaged no other box.

During the play that evening was in the ticket office of the theater; may have been out on the pavement in front, but do not remember; did not see Spangler there; never saw Spangler wear a moustache.

Cross-examined. None of the other boxes were occupied on the night of the President's assassination; do not remember any box being taken on that night. Booth did not apply to me, or to any one, for those boxes, to my knowledge, nor did any one else for him.

Know nothing of the mortise in the wall behind the door of the President's box.

The letter that Booth received on the day of the assassination, and read on the steps of the theater, was a long letter of four or eight pages of letter paper. He sat on the steps while reading his letter, every now and then looking up and laughing. It was while Booth was there that I suppose he learned of the President's visit to the theater that evening. There were several around Booth, talking to him. Mr. Gifford was there; Mr. Evans, an actor, and Mr. Grillet, I remember.

The President's visit to the theater that evening could not have been known until 12 o'clock, unless it was made known by some one from the Executive Mansion. It was published in the Evening Star, but not in the morning papers.

Am not acquainted with John H. Surratt; never saw him that

I know of; have never seen the prisoner, Herold; might have stated in the saloon on Tenth street that the President was to be at the theater that evening, and also that General Grant was to be there.

James R. Ford. Was business manager of Ford's theater; was first apprised of the President's intended visit to the theater on Friday morning, at half-past 10; a messenger from the White House, came and engaged the box. The President had been previously invited to the theater that night; had no knowledge of his intention to visit the theater until the reception of that message; saw Booth about half-past 12, two hours after I received this information; he was coming from the direction of the theater.

Cross-examined. The notice in the Evening Star that announced the President's intended visit to the theater, also said that General Grant would be there.

To *Asst. Judge Advocate Burnett.* I wrote the notice in the ticket office about half-past 11 or 12 o'clock, and sent it to the office immediately; I at the same time carried one myself to the National Republican. The notice appeared in the Star about 2 o'clock; had not seen Booth previous to writing the notice, nor do I remember speaking to any one else about it.

John T. Ford. Reside in Baltimore and am proprietor of Ford's theater in Washington. Edward Spangler has been in my employ three or four years at intervals, and over two years continuously; he was employed as a stage hand, frequently misrepresented as the stage carpenter of the theater. He was a laborer

to assist in shoving the scenery in its place, as the necessity of the play required; during the day to assist in doing the rough carpenter work incidental to plays to be produced.

His duties required his presence upon the stage during the whole of a play.

His absence for a moment might imperil the success of a play, and cause dissatisfaction to the audience. There are intervals, it is true, but he can not judge how long or how brief a scene may be.

On Friday, the day of the assassination, was in Richmond. Hearing of the partial destruction of that city by fire, I went there, anxious to ascertain the condition of an uncle, a very aged man, and my mother-in-law; did not hear of the assassination until Sunday night, and then heard that Edwin Booth was charged with it.

During the performance of the "American Cousin," Spangler's presence on the stage would be necessary. The first scene of the third act is quick, only of a few moments' duration. The second scene is rather a long one; probably eight, ten or twelve minutes long. Spangler's presence would be necessary unless positively informed of the duration of the scene.

In the second act hardly think there is an interval of more than five or eight minutes between the times that Spangler would have to move the scenes. His constant presence upon the stage would be absolutely necessary if he attended to his duties.

In the intervals between the scenes, he should be preparing for the next change, to be ready

at his scene, and to remain on the side where the stage carpenter had assigned him his post of duty; besides, emergencies often arise during an act that require extra services of a stage hand.

The stage manager directs, the stage carpenter executes the work belonging to the entire stage. The duty of keeping the passage way clear and in a proper condition belongs to the stage carpenter's subordinates. It is the duty of every one to keep the passage way clear, and is as indispensable as keeping the front door clear. The action of the play might be ruined by any obstruction or hindrance there.

My positive orders are to keep it always clear and in the best order. It is the passage way used by all parties coming from the dressing rooms. In a play like the American Cousin, the ladies were in full dress, and it was absolutely necessary that there should be no obstruction there, in order that the play should be properly performed. Every one had to use that passage. The other side of the stage was not used more than a third as much.

Keeping the passage way clear would not be a duty of Spangler's, unless he was specially charged with it.

Spangler considered Baltimore his home. He buried his wife there about a year ago; he usually spent his summer months there, during the vacation of the theater, chiefly in crab-fishing; he was a great crab-fisher; we used to plague him about it.

(Exhibiting a coil of rope found at Spangler's boarding house, in his carpet-bag.)

That rope might be used as a crab-line, though it is rather short for that purpose. Professional crab-fishers use much longer ropes than this; though I have seen ropes as short as this, which I understand is eighty feet, used by amateurs in that sport.

Spangler seemed to have a great admiration for J. Wilkes Booth.

Booth was a peculiarly fascinating man, and controlled the lower class of people, such as Spangler belonged to, more, I suppose, than ordinary men would. Spangler was not in the employ of Booth, and only since the assassination have I heard that he was in the habit of waiting upon him; have never known Spangler to wear a moustache.

Have known John Wilkes Booth since his childhood, and intimately for six or seven years.

Do not think that the leap from the President's box upon the stage would be at all a difficult one for Booth.

Have seen him make a similar leap without any hesitation; he usually introduced such a leap into the play of Macbeth. I should not think a rehearsal of it was needed. He was a very bold, fearless man; he always had the reputation of being of that character. He excelled in all manly sports. We never rehearse leaps in the theater, even when they are necessary to the action of the play; they may be gone over the first time a play is performed, but it is not usual. Booth had a reputation for being a great gymnast. He introduced, in some Shakspearian plays, some of the most extraordinary and outrageous leaps—at least they were deemed so by

the critics, and were condemned by the press at the time.

Saw him on one occasion make one of these extraordinary leaps and the Baltimore Sun condemned it in an editorial the next day—styling him the gymnastic actor. It was in the play of Macbeth, the entrance to a witch scene; he jumped from a high rock down on the stage, as high or perhaps higher than the box; think nearly as high as from the top of the scene; and he made the leap with apparent ease.

Booth was in the habit of frequenting Ford's theater at Washington; seldom visited the theater but what I found him about or near it, during the day; usually came down to the theater three days a week, devoting the other three to my business in Baltimore, and being there between the hours of 10 and 3; would nearly always meet Booth there when he was in the city. He had his letters directed to the theater; last time I saw Booth was two or three weeks before the assassination.

The last appearance of John McCullough at my theater in Washington was on the 18th of March, the night, I believe, when the Apostate was played. Mr. McCullough always appears with Mr. Forrest, and he has since appeared in New York.

Cross-examined. I can not state positively that the private boxes are locked when not in actual use; that is our custom in Baltimore. We keep the boxes locked, and the keys in the box-office; here, I understand, the custom is for the ushers to keep the keys. James O'Brien was the usher of the dress-circle, and James R. Ford and Henry Clay

Ford were the parties authorized to sell tickets for those boxes that day.

None of the boxes were occupied that night, except that occupied by the President. I have heard the American Cousin. It was, when originally produced, an exceedingly attractive play; of late years it has not been a strong card, but a fair attraction. Washington is a very good place for selling boxes usually. They are generally in demand, and nearly always two or three boxes are sold. I remember occasions when we sold no boxes at all, and had quite a full house; but those occasions were rare. My reason for constructing so many boxes to this theater was, that usually private boxes were in demand in Washington—more so than in almost any other city. It is not a favorite place to see a performance, but it is a fashionable place here to which to take company.

To *Mr. Ewing.* Have known Spangler for nearly four years; been in my employ most of that time. He was always regarded as a very good-natured, kind, willing man; only fault occasionally drinking more liquor than he should have done, not so as to make him vicious, but to unfit him to work. Never knew him to be in but one quarrel, and that was through drink. He was always willing to do anything, and was a very good, efficient drudge. He was considered a very harmless man by the company around the theater, and was often the subject of sport and fun. Do not think he was intrusted with the confidence of others to any extent. He had not many associates. He had no

self-respect, and was a man that rarely slept in a bed; he usually slept in the theater. Never knew anything of his political sentiments in this city; never heard from him an expression of partisan or political feeling. In Baltimore he was known to be a member of the American Order.

Joseph S. Sessford. Was seller of tickets at Ford's theater. None of the private boxes, except that occupied by the party of the President, were applied for on the evening of the assassination, nor had any been sold during the day.

William Withers, Jr. The door leading into the alley from the passage was shut when Booth rushed out. After he made the spring from the box, and ran across the stage, he made a cut at me, and knocked me down to the first entrance; then I got a side view of him. The door was shut, but it opened very easily; saw that distinctly. He made a plunge right at the knob of the door, and out he went, and pulled the door after him. He swung it as he went out. Did not see Booth during the day.

Henry M. James. Was at Ford's theater on night of the assassination. When the shot was fired, was standing ready to draw off the flat, and Spangler was standing right opposite to me on the stage, on the same side as the President's box, about ten feet from me. From his position he could not see the box, nor the side of the stage on which Booth jumped. Had frequently during the play seen Spangler at his post. Saw no one with him. The passage-way was clear at the time; it was our business to keep it

clear; it was more Spangler's business than mine. Saw Spangler when the President entered the theater. When the people applauded on the President's entry, he applauded with them, with both hands and feet. He clapped his hands and stamped his feet, and seemed as pleased as anybody to see the President come in. Did not see Jacob Ritterspaugh near Spangler that evening. He might have been there behind the scenes, but I did not see him. After the shot was fired did not see Spangler at all.

J. L. Debonay. Was playing what is called responsible utility at Ford's theater. On the evening of the assassination Booth came up to the alley door and said to me, Tell Spangler to come to the door and hold my horse. Did not see his horse. Went over to where Mr. Spangler was, on the left-hand side, at his post, and said, Mr. Booth wants you to hold his horse. He went to the door and went outside, and was there about a minute when Mr. Booth came in. Booth asked me if he could get across the stage. Told him no. The dairy scene was on, and he would have to go under the stage and come up on the other side. About the time that he got upon the other side, Spangler called to me, Tell Peanut John to come here and hold this horse; I have not time. Mr. Gifford is out in the front of the theater, and all the responsibility of the scene lies upon me. Went on the other side and called John, and John went there and held the horse, when Spangler came in and returned to his post.

Saw Spangler three or four

times that evening on the stage in his proper position. Saw him about two minutes before the shot was fired. He was on the same side I was on—the same side as the President's box. About five minutes after the shot was fired again saw Spangler standing on the stage, with a crowd of people who had collected there.

Saw Booth when he made his exit. Was standing in the first entrance on the left-hand side. When he came to the center of the stage, I saw that he had a long knife in his hand. It seemed to me to be a double-edged knife and looked like a new one. He paused about a second, and then went off at the first entrance to the right-hand side. Think he had time to get out of the back door before any person was on the stage. It was, perhaps, two or three seconds after he made his exit before I saw any person on the stage in pursuit. The first person I noticed was a tall, stout gentleman, with gray clothes on, I think, and I believe a mustache. Booth did not seem to run very fast across the stage; he seemed to be stooping a little when he ran off. The distance he ran would be about thirty-five or forty feet; but he was off the stage two or three seconds before this gentleman was on, and of the two, I think Booth was running the fastest.

Cross-examined. When the shot was fired on the night of the assassination, was standing on the left-hand side of the first entrance, the side the President's box was on. About two minutes after Mr. Stewart left the stage, or about time to allow of his getting to the back door, saw

Spangler shove the scene back to give the whole stage to the people who came on. Spangler then came to the front of the stage with the rest of the people. There was then a cry for water. Started to the green-room and he came the same way. About a half dozen of us went to get some water to carry it to the private box.

When Booth wanted Spangler to hold his horse, and I went over to tell him, Spangler and Sleichman were standing close to each other on the opposite side of the stage, the side of the President's box. Spangler then left; saw him go out to Booth, and in about a minute or a minute and a half Booth came in.

Heard no conversation between Spangler and Booth. Booth met Spangler at the door, and was standing at the door on the outside; the door was about half open when Spangler went out. If any person had followed Spangler I should have seen him. Was half-way between the back door and the green-room, about 20 feet distant, I suppose. Booth when he came in, went under the stage to the opposite side, and went out of the side door; I went under the stage and crossed with him. Did not see him speak to any one. I was in front of the theater about five minutes before the assassination; did not see Spangler there.

Have known Spangler for about six months. Have never seen him wear a mustache. He is a man that has been a little dissipated a considerable portion of his time—fond of spreeing round. He is free in conversation, especially when in liquor.

When Booth passed under the stage, he went through the little side passage, level with the lower floor of the theater, that leads out into Tenth street; that side passage also leads up to Mr. Ford's room. Went out through that passage to the front of the theater, and returned by the same way, and had taken my place on the stage when the pistol was fired. Was not doing anything, but was leaning up against the corner of the scene at the time. We were waiting for the curtain to drop. Mr. Harry Hawk was on the stage at the moment, playing in a scene. I played in the piece, taking the part of John Wigger, the gardener.

William R. Smith. Am superintendent of the Botanical Garden, Washington. Was in Ford's theater at the time of the assassination. Saw Booth pass off the stage, and Mr. Stewart get on it. Mr. Stewart was among the first to get on; but my impression is that Booth was off the stage before Mr. Stewart got on it. Did not notice him after he got on the stage.

J. P. Ferguson. Saw the gentleman who first got upon the stage after Booth got off. He was a large man, dressed in light clothes, with a mustache. It was probably two or three minutes after Booth went off the stage that this man went out of the entrance. Saw no one else run out of the entrance except Hawk, the young man who was on the stage at the time Booth jumped from the box. If any one had run out of the entrance following Booth I should probably have seen him, because I thought it was very singular that

those who were near the stage did not try to get on it.

James Lamb. For over a year have been employed at Ford's theater as artist and scene painter.

(The rope found in Spangler's bag exhibited to witness.)

I have seen ropes like this at the theater. There are probably forty or fifty of such ropes in use there. They are called border ropes, and are about seventy or eighty feet in length, used for suspending the borders that hang across the stage. This rope has the appearance of having been chafed; a new rope would be a little stiffer in its texture than this. Should say this is a new rope, but has been in use.

I think it is a rope very similar to the ones used at the theater, but I should be very sorry to swear that it was one of them.

Was in the theater the whole of Saturday, the day after the President was assassinated, from 10 o'clock until the military guard took possession, and saw Spangler there several times during the day.

Cross-examined. Saw him on the stage. Maddox, Jake, Mr. Gifford and Mr. Wright, the stage-manager, were in and out occasionally. Carland was also there with Spangler, Maddox and myself in the forenoon, loitering and walking about, sometimes sitting down; there was no companionship particularly. I have not seen Spangler since until this morning.

Jacob Ritterspaugh. Was in the theater with Mr. Lamb the next day after the assassination. Told him about Spangler slapping me and saying, Shut up;

don't say which way he went; on the night of the assassination, when Carland came up to Mr. Gifford's room, he woke me up and asked where Ned was. Told him I did not know, and then I told him that Ned had slapped me in the mouth, and said, Don't say which way he went.

While on the stage with Spangler the day of the assassination saw a man in the dress-circle smoking a cigar. Asked Spangler who it was, but he did not know; said we ought to tell him to go out; but Spangler said he had no charge on that side of the theater, and had no right to do so. Took no more notice of him and went to my work again. After awhile saw him sitting in the lower private box, on the right-hand side of the stage, looking at us. Told Ned, and he spoke to him, and then the man went out. That was about 6 on the evening of the day on which the President was assassinated.

Cross-examined. Never saw the man before. He wore a mustache.

James Lamb. Saw Ritterspaugh on the stage on Saturday, the day following the President's assassination. Ritterspaugh was grumbling, and saying that it was well for Ned that he hadn't something in his hand at the time. I asked him why. He replied, He struck me last night a very hard blow, and he said at the same time, Shut up; you know nothing about it. This was said in connection with Ritterspaugh having said it was Booth that ran across the stage. Ritterspaugh said he called out, I know him; I know who it was;

it was Booth, or something of that kind, and then Ned struck him and said, Hush up; be quiet. What do you know about it? That was while Mr. Booth was leaving the stage. It was when he was making his escape that Jake said he was rushing up and made his exclamation, That was Booth; I know him; I know him; I will swear that was Booth; when Ned turned round and struck him in the face with his hand. Ritterspaugh said, It is well for him I had not something in my hand to return the blow. Then he represented Spangler as saying, when he slapped him, Hush up; hush up; you know nothing about it. What do you know about it? Keep quiet; hushing him up.

Ritterspaugh did not say to me that when Spangler hit him on the face he said, Don't say which way he went. Am certain Ritterspaugh did not say that to me, or words to that effect.

Mr. Bingham. State, if you please, what Jake said on that occasion, and exactly what you have sworn he said, and all he said.

I will, as near as I can recollect. As he told me, he said, I followed out the party, was close at his heels, or near to him, and I said that is Booth. I know him; I know him; or words to that effect, as near as can be.

Mr. Bingham. Then Jake said he followed the party close to his heels? Yes, sir.

What more did Jake say? Did he say he came back after following him close to his heels? No; he received a blow from Spangler, and that shut him up. Do you swear now that Span-

gler followed the man close to his heels? No, sir.

Louis J. Carland. Am acquainted with Jacob Ritterspaugh. On the night of the assassination went to Mr. Gifford's room, and Ritterspaugh was there asleep; woke him up, and asked him where Spangler was. He seemed frightened; thought I was Mr. Booth.

Asked him where Mr. Spangler was. He told me he did not know where he was now; the last he had seen of Mr. Spangler was when he was standing behind the scenes, and that he did not know where he had gone; that when the man was running past he had said that was Mr. Booth, and Spangler had slapped him in the mouth and said to him. You don't know who it is; it may be Mr. Booth, or it may be somebody else.

He did not say then that Spangler slapped him on the face with the back of his hand and said, Don't say which way he went, nor anything to that effect.

Did not see Spangler until the next day; then I saw him in the theater on the stage. When he went upstairs to bed on the Saturday night after the assassination, he said there was some talk that the people were going to burn the theater, and as he slept very heavily, he was afraid to sleep up there; so I took him into my room, and he was there all night. He was put under arrest that night in my room.

Booth frequented the theater very familiarly before the assassination. He was there a great deal, and was very intimate with all the employees, and called them by name. He was a gen-

tleman who would soon get acquainted, and get familiar with people on a very short acquaintance.

(Exhibiting to witness the rope found in Spangler's bag.)

We use just such ropes as that in the theater to pull up borders and scenes, and for bringing up lumber to the top dressing rooms, because the stairs are too narrow. About two weeks before the assassination, we used such a rope as that to haul up some shelving for my wardrobe, through the window, to the fourth story; Spangler and Ritterspaugh brought it up; do not know that the rope we used was an extra one; there were a great many ropes around the theater.

Cross-examined. Spangler used to sleep in the theater before the assassination, and he slept there on that night, but not in the room he usually slept in. On that night he slept in the carpenter's shop attached to the theater; do not know where he slept on Sunday night.

It was about 12 o'clock on Friday night when I woke Ritterspaugh up; there was no one with me, but a policeman stood in the passage way. Mr. Gifford's bed is in the manager's office, on the first floor of the green room; that is where I found Ritterspaugh. He was frightened when I woke him up, and thought it was Booth. He did not say anything to me about Booth drawing a knife on him. When I asked, Where is Ned? he said he did not know where he was; that he supposed he was up; he went on and said that when Booth ran out through the passageway, while he and Ned were standing behind the scenes,

he made the remark, That is Mr. Booth, and Ned slapped him in the mouth and said, You don't know whether it is Mr. Booth or who it is. That is all I remember he said.

Never told it to any one but Mr. William Withers, Jr. I dined with him on the Sunday after the assassination, and told him then.

Re-examined. The carpenter shop is attached to the theater just the same as my wardrobe is. It is not in the theater building, but it is included in the theater. You do not have to go into the street to get to it.

Ritterspaugh had fully waked up when he told me that; he stood up and recognized me. He knew who it was before he began to speak.

The theater was guarded on Sunday night, but any of the employees who slept there could get in.

James J. Gifford. On Monday previous to the assassination, heard Booth tell Spangler to take his horse and buggy down to Tattersall's, the horse market, and sell it; presume Spangler sold it.

Previous to his release from Carroll Prison, Ritterspaugh did not tell me at the prison that Edward Spangler, directly after the assassination of the President in the theater, hit him in the face with the back of his hand and said, Don't say which way he went.

Have frequently heard of Spangler's going crab-fishing, but I never saw him. He has told me of going down to the Neck on the Saturday night, and staying till Monday morning.

(Exhibiting to witness the rope found in Spangler's bag.)

They use a line of that sort, with small lines tied to it, about three feet apart, and pieces of meat attached as bait.

Cross-examined. Three weeks ago Ritterspaugh said he was scared, and that he could not tell what he was doing; do not remember his precise words. He seemed to be troubled about it, and asked me if he could make a correct statement; I told him certainly he could.

Thomas J. Raybold. Have been engaged at Ford's theater a year to take charge of the house; to see to the purchasing of everything required in the house, and if any repairs were needed, they were done through my order; in the absence of the Messrs. Ford was in the box office and sold the tickets.

Know of the lock on the door of box 8, the President's box, it was burst open during Mrs. Bow-ers' engagement in March.

When the President came to the theater, boxes 7 and 8 were thrown into one by the removal of the partition between them. The door to No. 8—the one I burst open—was the one always used, and was the door used on the night of the assassination. The other door could not be used.

Do not know whether the lock was ever repaired after I burst it open. Frequently entered the box afterward, and always passed in without a key. The locks were only used to keep persons out when the boxes were not engaged. I have frequently had to order persons out when the boxes were left open.

About two weeks before the 14th April, J. Wilkes Booth en-

gaged a private box, No. 4, at Ford's theater, and in the afternoon he came again to the office and asked for an exchange of the box, and I believe it was made to box 7; cannot be positive whether it was box 7 or 8, that he occupied that night, but think it was 7. It is the door leading into box 7 that has the hole bored in it.

There were no tickets sold up to the time of the opening of the theater on the night of the assassination; was there in the morning, between 10 and 11, when the messenger obtained tickets for the President, and again in the afternoon, but do not know of any applications.

Saw Booth on the morning of the 14th at the office; I do not know whether before or after the box was engaged for the President; know he got a letter from the office that morning. Booth's letters were directed to Mr. Ford's box at the post office, and he generally came every morning for them.

The rocking chair was placed in the position it occupied in the President's box simply because, in any other position, the rockers would have been in the way. I had it so placed on two occasions before; last winter a year ago, when Mr. Hackett was playing, when the President was there.

(Exhibiting to witness the coil of rope found in Spangler's carpet bag.)

Cannot swear that this rope has been used at the theater, but we used such ropes as this at the time of the Treasury Guards' ball, from the lobby to the wings, to hang the colors of different nations on. It is like the kind

of rope we use in the flies for drawing up the different borders that go across from one wing to the other; judge this rope has been used.

Cross-examined. Any rope that was used about the theater ought to stay there; do not think its proper place would be in a carpet sack half a mile off. We use a great many ropes; and sometimes, when they are taken down, they lie upon the scene-loft until we need them again.

The outer door, or door of the passage to the President's box, never had a lock on; do not think it has even a latch on; do not know whether the force I employed against the door burst the lock or the keeper off. The fastening on the door is of pine; do not know whether it was split or not; I did not examine it; did not touch box 7.

Was in the President's box the morning after the assassination; I went in with some gentlemen to look at the hole in the door; did not see the mortise in the wall, nor any piece of wood to fasten the door with, nor did I see the mortise the previous afternoon; was there but for about five minutes, while the flags were being put up. The chair was in the box when I went in to help put up the flags; it was placed behind the door of box No. 7, with the rockers in the corner toward the audience; did not see him in the box, but my opinion is that the way the chair was placed, the audience was rather behind the President as he sat in the chair.

I cannot say the precise day on which Booth occupied box No. 7. Mr. Ford was the one who sold him the box and ex-

changed it. There were ladies and men with Booth, I think. I do not know anything at all as to whether Spangler got that rope from the theater rightfully or not.

Henry E. Merrick. Am a clerk at the National Hotel, Washington. On the evening of the 7th of March, in company with my wife and others, went to Ford's theater. Raybold took us to a private box. He went to the office for the key, but could not find it. He placed his shoulder against the door and burst it open. The keeper was burst off I think.

Our books show that John McCullough, the actor, left the National Hotel on the 26th of March; since then I have not seen him. I have never known him to stop at any other hotel than the National.

Cross-examined. Mr. McCullough may have called on some friend in the house, and I not see him. I have not seen him since the 26th of March.

It was the very first box that we went into on visiting the theater on the 7th of March; the partition was between the box we occupied and the one to our right, further on toward the stage. The box nearest the stage we did not enter at all.

James O'Brien. Had an engagement at night as usher at Ford's theater.

Some time before the assassination noticed that the keeper of box 8 had been wrenched off. But, as the door shut pretty tight, I never thought of speaking about it. You might lock the door, but if you were to shove it, it would come open.

The keeper on box No. 7 appeared to be all right; always locked that box. The door of No. 8 was used when the Presidential party occupied the box; when the party occupying the Presidential box entered, the door was always left open. The door of the passage leading to the two boxes had no lock on it, or fastening of any kind.

Joseph T. K. Plant. Am a dealer in furniture; engaged in cabinet work; have visited Ford's theater today, and examined the keepers on boxes No. 7 and No. 8. To all appearances they have both been forced. The wood work in box 8 is shivered and splintered by the screws. In box 7, I could pull the screw with my thumb and finger; the tap was gone clear to the point. I could force it back with my thumb. In box 4, which is directly under box 8, the keeper is gone entirely.

Should judge that the keepers in boxes 7 and 8 were made loose by force; could not see any evidence of an instrument having been used to draw the screws in either of them.

Noticed a hole in the wall of the passage behind the boxes; it had the appearance of having been covered with something; noticed also a hole, a little more than one-fourth of an inch in diameter, in the door of box 7; is larger on the outside than it is on the inside. The left side of the hole feels rough, as if cut by a gimlet, while the lower part on the right hand side appears to have been trimmed with a penknife or some sharp instrument. The hole might have been made by a penknife, and the roughness might have been

caused by the back of the knife.

G. W. Bunker. Am clerk at the National Hotel. The day after the assassination packed Booth's effects at the National, and had his trunk removed into our baggage room. In his trunk I found a gimlet with an iron handle; carried it to my room, and afterward gave it to Mr. Hall, who was attending to Mr. Ford's business.

John McCullough, who always made his home at the National, registered his name the last time on March 11; he left on the 26th of March.

Charles A. Boigi. Know the

accused, Spangler; he boarded at the house where I boarded five or six months before the assassination, and I saw him at and about the house as usual for several days afterward. They had him once or twice in the station house, believe before he was finally arrested; do not recollect the date of his final arrest.

John Goenther. Boarded in the same house with the accused, Spangler, previous to his arrest off and on for the last three years; saw Spangler about the house for two or three days before the assassination; never saw him wear a moustache.

MR. EWING FOR THE PRISONER.

Mr. Ewing—Mr. President and Gentlemen of the Commission: In presenting to you this morning the case of the accused, Edward Spangler, I shall confine myself to a discussion of the evidence, leaving whatever I may see fit to say on the question of jurisdiction, and on the character of the charges and specifications to the occasion when my argument in the case of Mudd is presented.

Preliminary to a consideration of the specific items of testimony against Edward Spangler, I will briefly refer to and ask consideration of the evidence as to his character, his occupation, his relations to Booth, and Booth's habits of resorting to the theater and fraternizing with its employees.

John T. Ford says:

Spangler was employed as a stage hand, frequently misrepresented as the stage carpenter of the theater. He was a laborer to assist in the shoving of scenery into its place, and removing it within the grooves, as the necessity of the play required; during the day to assist in doing the rough carpenter work incidental to plays to be produced. He seemed to have a great admiration for Booth. Booth was a peculiarly fascinating man, and controlled the lower class of people, such as Spangler belonged to, I suppose, more than ordinary men would. Have known Spangler four years in my employ. He was always regarded as a very good-natured, kind, willing man. His only fault was occasionally drinking liquor more than he should have

done—not so as to make him vicious, but more to unfit him to work. Never knew him to be but in one quarrel since he has been in my employ, and that was through drink. He was a good, efficient drudge; always willing to do anything. Not a man that was trusted with the confidence of others. He had no self-respect. He was not one who had many associates. He usually slept in the theater—rarely slept in a bed. Very harmless—always esteemed so, I think, by all the company around the theater; often the subject of sport and fun. Never knew anything of his political sentiments in this city. In Baltimore he was known to be a member of the American Order.

Gifford says:

Of his relations with Booth know nothing of, further than friendly. Everybody about the house was friendly with Booth. He had such a winning way that it made every person like him. When the house was open, he had free access all through the house.

Spangler was a sort of drudge for Booth. He used to go down and help him hitch his horse up, and such things.

It is to be remarked here, that a stable a few yards from the back of the theater, and from the doors of the negro women, Mrs. Turner and Mrs. Anderson, was used by Booth for his horses and buggy, from early in January until the assassination, and Burroughs and Spangler, employed at the theater, attended to the drudgery at the stable.

Burroughs (“Peanuts”) says (cross-examination):

Spangler was in the habit of bridling and saddling and hitching up Booth’s horse, and holding him, too, when I was not about.

While calling the attention of the Court to the evidence as to the relations existing between Spangler and Booth, I desire it also to mark the fact that in the great volume of testimony as to the letters, conversations, meetings, associations, acts done, and things said which have been adduced as evidence in these cases, there is not the slightest indication that Spangler ever met Booth except in and around the theater, that he ever got a note or a message from him, or ever saw or heard of any one of the persons suspected to have been associated with Booth, in either the conspiracy to capture or that to assassinate the President and the heads of the Government.

Now, in the light of the above-recited evidence, I am certain there is nothing shown to have been said or done by anybody prior to the moment of assassination—outside of the testimony of Sergeant Joseph M. Dye and John F. Sleickman—tending at all to show that Spangler had any intimation of Booth's guilty purpose, or was in any way, even innocently, instrumental in effecting it. Let us briefly consider the several items of evidence of acts done and things said prior to the conversation with Booth, narrated by Sleickman, and consultation with him noticed by Sergeant Dye, which have been adduced here as evidences of Spangler's guilt.

1. He repaired Booth's stable, in January, Burroughs says. What of that? He was a rough carpenter, and a drudge at the theater, and the stable was near at hand. The incident is unworthy of further notice or comment.

2. He sold Booth's horse and buggy several days before the assassination, at the horse market or at a livery stable. (Burroughs'.) The same witness says he prepared them for sale, and went with Spangler, and that Gifford sent them to make the sale. And Gifford says he received, and J. R. Ford receipted for the money, and he (G.) paid it over to Booth. This item is at least as good against Gifford and "Peanuts" as against Spangler, and amounts to nothing against either.

3. There was found in Spangler's carpet-sack, at his boarding house, on the 17th of April (the day of his arrest), rope 81 feet long, some letter paper, and a shirt collar. (Rosch.) The rope was offered in evidence; the letter paper and shirt collar were not. The rope was just like forty or fifty others used about the theater as "border ropes," and to "haul up lumber to the top dressing rooms, because the stairs are so narrow the timber cannot be got up that way." (Carland.) "The border ropes are seventy to eighty feet long—not less than 80 feet." (Lamb.) "They are of just the same material, texture and size as this." (Carland, Lamb, Raybold.) "We used such ropes as this at the time of the Treasury Guards' ball, to stretch from the lobby to the wings, to hang on it the colors of different nations." (Raybold.) "This rope has evidently been in use." (Carland, Lamb, Raybold.)

“Sometimes we use them, and a great many of them, and then again we have to take them down, and they lie up there on the scene loft until we need them again.” (Raybold.) From the evidence, it appears probable Spangler stowed away this rope to use on his frequent fishing excursions as a crab line. Gifford says he told him he went crabbing—that he would go down to the Neck on Saturday night and stay until Monday morning. They have a line something of this sort, and small lines tied on to it with pieces of meat attached.

And John T. Ford says:

Spangler had lived in Baltimore, buried his wife there a year ago, and considered Baltimore his home; usually spent the summer months, during the vacation of the theater, there in crabbing and fishing. He was a great fisher and crabber. We used to plague him about it.

(Exhibiting to witness the coil of rope found in a carpet-sack at the house where Spangler took his meals.) That could be used as a crab line, though it is rather short for that purpose; have seen some as short used. Have seen such ropes. I frequently go fishing in the summer.

While it is unquestionably true that, so far as the evidence goes, Spangler may have got this rope for some purpose other than that suggested, it is also true that there are many other uses for which we can more readily imagine he got it than for the assassination plot. In the devilish scheme of that conspiracy I can imagine no use for a rope eighty feet long. It could not have been provided for lariats, for there was then no grass; nor for halters, for it would make a half score. If, however, it had been provided for any purpose connected with the conspiracy, it would have been kept at the theater, or the stable, and not off at a remote boarding house. It is easier to imagine him frugal enough to provide for his home, in Baltimore, a clothes line or a bed cord, than foolish enough to provide for the assassin's scheme an article so unnecessary as an eighty-foot rope. My only embarrassment in this point of the case arises from a failure to show that he fairly got title to the rope; but in this embarrassment I find consolation in reflecting that I am not called on to show what he meant to do with the

shirt collar and the letter paper—which would have been a much more difficult task.

4. Two boxes had always been thrown into one when the President came to the theater on several former occasions during the season. (H. Clay Ford.) Except while taking out the partition, Spangler was not in the box as it was being prepared and decorated. (H. Clay Ford.) But Burroughs says:

Harry Ford told me to go in with Spangler and take out the partition of the box, as the President and General Grant were coming there. I then went after Spangler.

He made remarks and laughed. He said, "Damn the President and General Grant." I said to him, "What are you damning the man for—a man that has never done any harm to you?" He said he ought to be cursed when he got so many men killed. I stayed there until they took the partition out, and sat down in the box.

Judge Advocate omitted to ask his witness (Jake Ritterspack) as to this conversation, so that it rests on the evidence of "Peanuts" only. I do not think it goes a great way toward establishing Spangler's connection with the conspiracy, or calls for special comment. But I will present a set-off to this exhibition of ill-feeling toward the President by Spangler, at being called away from his work on the stage to do an extra job in fixing the box, by his equally strong exhibition of good feeling, when, as the President entered the theater, "he clapped his hands and stamped his feet, and seemed as pleased as anybody to see the President come in." (James.)

5. Burroughs further says, between five and six o'clock Friday evening, Booth came with his horse to the stable and called for Spangler and wanted a halter. That Spangler sent Ritterspack up stairs for one; that Maddox was there with them, and Spangler wanted to take the bridle and saddle off, but Booth would not let him, but that he (Spangler) did afterward take them off. The fact that Booth wanted the saddle and bridle left on, and Spangler wanted to take them off, and did subsequently do it, indicates that Spangler had, up to that time, no intimation of Booth's need of the horse that night.

6. I have no doubt that the actual and the apparent preparations in and about the President's box for the assassination,

more than all other circumstances combined, led the Government to arrest Spangler and put him on trial as a conspirator. They were sufficient to direct suspicion against him and to justify his arrest, for in them they appeared to the casual observer the hand of a mechanic in aid of Booth's plan. But the evidence has wholly cleared the defendant of that suspicion. These actual and apparent preparations were:

1. A quarter of an inch hole bored through the door of box 7, which was the closed door when the two boxes, 7 and 8, were thrown into one for the President's party. This hole was bored with a gimlet, and enlarged on the outside with a penknife. (Plant, Ferguson, Olin.) A gimlet was found in Booth's room, after he fled, about the size of the hole, but it was lost or mislaid, and, therefore, could not be fitted to the hole. Booth occupied box 7 one night, about two weeks before the assassination. (Raybold.) "He secured box No. 7 three or four times during the season before the assassination, but I cannot say whether he occupied it or not." "Sometimes he would use it and sometimes he would not." "He always engaged that box." (H. Clay Ford.) The fact that Booth apparently brought the gimlet, bored the hole, and carried the gimlet to his room again, leaves this item of testimony not only of no effect against Spangler, but of great significance in his favor. For, if Booth had a confidant and confederate in this rough carpenter, the work would have been done by Spangler, or, at least, with Spangler's tools.

2. The hole in the plastering, two by three inches, into which the brace rested which fastened the outer door leading from the dress circle into the little passage from which the doors open into the private boxes. This hole was cut with a penknife, apparently, from the scratches down the wall. (Rathbone.) It was not cut into the brick, but about an inch, or an inch and a half, into the plaster. It would take ten or fifteen minutes to do it with a penknife. (Gifford.) That passage was pretty dark, even when the door is opened. (H. Clay Ford.) If done with a knife, even with the door opened, it would make no noise sufficient to attract attention. (Gifford.) This item, like the last, tends in Spangler's favor, and

not against him. For a carpenter, with tools at hand, would have made the hole with a chisel, rather than with a penknife. The chips which fell from whittling one side of the gimlet-hole, and the plastering from the hole in the wall, were not on the floor next morning. (Judge Olin.) This indicates that the work was done in advance, or on some one of the occasions when Booth occupied box 7, opposite the door of which the hole in the wall was cut.

3. A penknife was found in the President's box next morning. This was used on Friday afternoon by Harry Ford, in cutting the strings to tie up the flags and the picture of Washington, and was left by him accidentally in the box. (H. Clay Ford.)

4. The screws which fastened the keepers of the locks on the doors of 7 and 8, were so loose that the doors could be easily pushed open, even when locked. (Judge Olin.) The theory of the prosecution was that the screws were drawn by Spangler, in advance, in aid of Booth's plan. Raybold says that several weeks before the assassination, he burst open the door of box 8 to admit Mr. Merriek, and that after that the lock was not repaired and wouldn't fasten the door; but Merriek says it was the door of box 7. This conflict of evidence is of no consequence, however, because O'Brien, the usher, says:

In box 8 the keeper was wrenched off, broken off in some way; do not know how, but the door itself was pretty tight at the top, and I never thought of speaking about it.

And Plant, an expert, unconnected with the theater, who, a few days ago, examined the keepers of both boxes, says:

I examined the keepers on boxes 7 and 8. To all appearances they had both been forced. The woodwork in box 8 is shivered and splintered by the screws. In box 7 he could pull the screw with thumb and finger; the tap was gone clear to the point; could force it back with the thumb. In box 4, which is directly under box 8, the keeper is gone entirely. The keepers of the locks in boxes 7 and 8 were made loose by force applied to the outside of the doors. There is no appearance of an instrument having been used to draw the screws in either of those boxes.

5. A square pine stick, about four feet long, and beveled at one end, with which the outer door was braced, was picked up in the box that night. (Jaquette.) Through the beveled end are driven two lath nails, bent at the ends, which Gifford, the carpenter, says might have been put there to hold that end against the door, but which obviously were not put there for any such purpose, as they were wholly unnecessary for that purpose, and were not driven into the door. In the other end are two large nails, which, he says, could have been of no use to hold the butt end in the hole. The stick had evidently been prepared for some other use. It is doubtful whether it was the stick that Booth used, as it was found, not in the passage, but in the box (Jaquette); and Major Rathbone says: "I found the door barred by a heavy piece of plank;" and "My impression was, it was a different piece of wood." Whether this is in fact the bar is of no apparent importance. The members of the Court have observed that the wall forms with the door, when shut, an acute angle, and are doubtless satisfied that a strong stick or piece of plank, anywhere from three to five feet long, would answer well to bar the door. But if this was the bar, it was not prepared by Spangler for the purpose, for he, a carpenter, would not have driven the nails in the butt end.

These three acts of preparation—the boring the hole in the door, the cutting the hole in the plaster, and providing the brace—were acts of mere drudgery, which, if Spangler had been a conspirator, Booth would naturally have called on him to do; and the fact that Booth certainly did one, and probably did the others, and the presumption that Spangler did neither, tend strongly to the conclusion that he was not in the plot when these preparations were made.

Ritterspack, in his last examination, said that just before he and Spangler went home to supper, on the day of the assassination, and about six o'clock in the evening, they were at work together on the stage, and saw a stranger in the dress circle smoking a cigar. He called Spangler's attention to him, but he said "he had no charge on that side of the theater, and no right to order the man out." That presently the stranger

entered one of the lower private boxes opposite the President's box, when Spangler said something, in consequence of which the man left. The Assistant Judge Advocate objected to the witness saying what it was Spangler said to the stranger to make him leave. Doubtless this man was there inspecting the President's box for Booth, and possibly cutting the hole in the wall, and bringing in the bar. Had Spangler been in the conspiracy, would Booth have needed the services of this inspector and assistant?

We now come to the consideration of the testimony of Sleickman, referred to above.

I saw him about 9 o'clock, I guess it was. He came up on a horse and came in a little back door to the theater. Ned Spangler was standing there by one of the wings, and Booth said to him, "Ned you will help me all you can, won't you?" and Ned said, "Oh, yes."

He did not see Booth any more. Just got a glimpse of him as he was going out the first entrance, about half-past 10 o'clock, after he shot the President. Spangler was standing close to him. (About three feet.) He could have seen him from where he was standing.

Now this evidence is flatly contradicted by the evidence of J. L. Debonay, the "responsible utility" man. He says:

When Booth said he wanted Spangler to hold his horse, I went over for Spangler.

He and Sleickman were both standing at the same place, very near, close to each other, on the left-hand side of the stage looking to the audience, the same side that the President's box was on. Mr. Sleickman did not go over to the door, but saw Spangler go over, because I went right behind him, pretty close. Saw Spangler go out of the door. Saw Booth come in a moment after Spangler went out. I was about half way between the back door and the green room—about 20 feet. Did not hear any conversation between Spangler and Booth. Would have seen any person who followed Spangler; did not see Sleickman. When Booth came in he went under the stage to the opposite side, and he went out the side door. I went under the stage and crossed to the opposite side myself.

It may be suggested that the conversation between Booth and Spangler occurred at some time during the play, prior to the time when Booth rode up to the back door and called for Spangler to hold his horse. But, if that be claimed, I assert that the evidence shows conclusively that Booth came to the

door with his horse but once that night during the play. And in support of that assertion I here refer the Court to each item of evidence (except that of Sleickman and Debonay, the conflicting witnesses), as to Booth entering the theater by the back door during the performance.

1. John Miles, colored, whose place was in the flies, says:

Booth came there between 9 and 10 o'clock, and he brought a horse from the stable and came to the back door and called "Ned Spangler" three times out of the theater. Ned Spangler went across the stage to him. After that he did not see what became of Booth, and never noticed him any more until he heard the pistol go off.

They had just closed a scene, and were getting ready to take off that scene at the time Booth called for Spangler. Spangler was at the second groove then, and pushed a scene across. Booth called him three times. I was up on the flies, about three and one-half stories from the stage. John Peanuts held the horse; he was lying on a bench, holding the horse, when I noticed him.

2. Joseph Burroughs ("Peanuts") says:

I saw him on the afternoon of the 14th of April, when he brought his horse to the stable, between 5 and 6 o'clock; saw him on the stage that night; did not see him when he came up the alley with his horse; saw him when Spangler called me out there to hold the horse. Heard Debonay calling Ned, that Booth wanted him.

3. Mary Ann Turner (colored) says:

On the afternoon of 14th April, saw Booth, I think, between 3 and 4, standing in the back door of Ford's theater, with a lady by his side; between 7 and 8 that night he brought a horse up to the back door, and opened the door, and called for a man by the name of "Ned" three times. "Ned" came to him, and I heard him say to "Ned," in a low voice, "Tell Maddox to come here;" then saw Maddox come; he (Booth) said something in a very low voice to Maddox, and I saw Maddox reach out his hand and take the horse; but where "Ned" went I cannot tell. Booth went on into the theater. My front door fronts to the back of the theater.

4. Mary Jane Anderson says:

Her house adjoins that of Mrs. Turner. Booth came up to the theater door with the horse by the bridle. He pushed the door open, and in a loud voice he called "Ned," four times. There was a colored man up at the window, and he said: "Mr. Ned, Mr. Booth calls you." That is the way I came to know it was Mr. Booth. It

was dark, and I could not see his face. When Mr. Ned came, Booth said to him, in a low tone, "Tell Maddox to come here." Then Mr. Ned went back, and Maddox came out. It was about an hour from the time he came up there to the time they said the President was shot.

These six witnesses (including Sleickman and Debonay) are all who have testified to Booth's coming to, or entering, the back door of the theater that night. Every one of them, except Sleickman and Burroughs, refers to his calling loudly several times for Spangler. Burroughs, who was too remote from the door to hear Booth calling for Spangler, fixes it as being the same time, by saying that he heard Debonay repeat Booth's call for Spangler; and Sleickman says it was when Booth came up with his horse to the back door that he saw him and heard him talk to Spangler. If Booth had previously, during the play, come up the alley to the back door with his horse, Mrs. Turner, Mrs. Anderson and John Miles, from their positions adjacent to and overlooking that part of the paved alley, would certainly have seen or heard, and noticed him or the horse; and if Booth had entered the theater previously during the play, and stopped by the scenes to talk to Spangler, surely some one else, on that small, thronged stage, would have seen or heard him. It would have been, of itself, a trifling incident; but on the day following the assassination, when it was established that Booth was the murderer, I venture to say there was not a man or woman in the city of Washington, who ever saw Booth, who did not recall when and where he or she saw the assassin last. And, therefore, I feel safe in asserting that, had he rode up to the back door and gone into the theater at any other time that night than the one time fixed by the concurrent testimony of so many witnesses, we would have learned it in this investigation; for every step the villain took about the theater that night is recounted in the evidence before us.

If, then, he was there but once, what credence can be given to Sleickman's evidence as to Booth's statement to Spangler and the reply? I claim that the evidence overthrows it. If the issue as to it were to be settled by a consideration only of

Sleickman's evidence with the flatly contradictory evidence of Debonay, I might reasonably claim an even balance of testimony, as the two witnesses were apparently equally credible. But Debonay's evidence is consistent with, and supported by, the other evidence of the case, and Sleickman's is not. For, if Sleickman's statement be true, some other man, not disclosed by the proof, must have held Booth's horse while this colloquy was going on in the theater. Mrs. Turner, in her confused statement, says, in substance, that after Booth came up, Spangler first held the horse a few minutes, and from that time it was held by the same man who held him at the time of the assassination, to-wit, Burroughs, whom she mistook for Mad-dox, one of the witnesses for the prosecution. She testifies the horse was held all the time, and if any one else had held him, surely he would not have escaped the vigilant and incessant search of the Government.

But grant Booth did say to Spangler, "Ned, you will help me all you can, won't you?" and Ned replied, "Oh, yes," all said in a loud tone, and in sight and hearing of Sleickman. If there were preceding incidents in proof showing Spangler's knowledge of Booth's guilty purpose, this alleged colloquy might be regarded as a link in a chain of evidence against him. But of itself, unaccompanied with the slightest evidence or ground of presumption of Spangler's previous knowledge of Booth's purpose, and followed (as we will see in this discussion of the evidence), by not the slightest act, or arrangement, or apparent intent of co-operation in the crime, or the escape, it should, I think, be treated by the Court (if it be thought to have occurred), as on Spangler's part nothing but the unwitting response of a drudge to a remark of one he looked up to as a superior, whom he was accustomed to serve, and of which he knew not the special intent. Had he known Booth's purpose, and meant to aid his escape, would he not have got a substitute to shove the scenes, and been in the passage, or at the door ready to help baffle the pursuers? Or would he not, at least, when he heard the pistol fired, have crossed to the passage and opened the door which Withers, and Ritterspack, and Stewart say was shut when Booth reached it? Is it possi-

ble he would have stood motionless (as Ritterspack and James say he did) remote from the passage and the door, and thus leave Booth to the hazard of his flight, unaided? Would he, as Debonay says he did, instead of following Booth to see him off, have shoved back the scene behind which he stood, so as to allow free exit for the crowd who sprang on the stage to follow and catch the assassin, and himself run for water for the President? His whole conduct before and after the shot was fired shows that if that remark was in fact made to him by Booth, he was wholly ignorant of its imputed meaning.

I here desire to call attention of the Court to a fact in the evidence which, to my mind, conclusively shows that if Booth did in fact say that to Spangler, and get that reply, still Spangler neither knew Booth's criminal purpose nor was a party to its execution. That fact is, that Booth knocked "Peanuts" down as he took the horse from him, and fled. Now, I assert that if the evidence shows that Booth intended for Spangler, or assigned to him any part to perform in the conspiracy, it was to hold his horse in the alley at the back door, and nothing else whatever. That Spangler failed to do that, but stuck to his duties on the stage, is evidence drawn from his conduct that he was no party willing to aid and abet the crime. That Booth knocked the horse holder down is evidence equally conclusive from his conduct that Spangler was not intrusted with the secret of the crime to be committed, nor relied on to knowingly aid and abet it. For he, in all probability, thought it was Spangler, and not "Peanuts," who held his horse. He had left him with Spangler, who did not call "Peanuts" to hold him until Booth had passed under the stage and out the side entrance (Debonay), to return on the stage no more until fleeing from his pursuers. As Booth fled he could not have seen Spangler on the stage; and the night was so dark he did not distinguish "Peanuts" from Spangler, both being of near the same height and frame. It was so dark that Mrs. Simms and Mrs. Turner both took "Peanuts" for Maddox—a man less like him than Spangler is—though he was but a few yards off, holding the horse an hour. And surely Booth, rushing from the glare of the stage, into the blinding dark-

ness of that night, wild with excitement and passion would not scrutinize the features of his horse boy. He knocked "Peanuts" over, supposing him to be Spangler, thus showing a fear that Spangler would pursue him, and thus, in the midst of his own crime, giving us convincing evidence of Spangler's innocence.

The other item of evidence tending to show that Spangler knew of Booth's purpose and was consenting, advising or aiding to accomplish it, is the testimony of Sergeant Jos. M. Dye, which I will now consider. He says he saw a roughly-dressed man standing on the pavement, just outside the door of the theater, from twenty-five or thirty minutes past nine, till ten minutes past ten, by the time of the theater clock. That Booth frequently whispered to this man during that time, and that just as the call was made by Booth's other and unknown companion, at ten minutes past ten, from the clock in the theater hall, Booth whispered to this roughly-dressed man and entered the theater. The roughly-dressed man was not seen to leave by the Sergeant, who himself at that time left and went with a friend to a grocery around the corner, where in fifteen minutes, or less, news came that the President was shot. He could describe no article of the roughly-dressed man's clothing, but a black slouch hat, thought him five feet eight or nine inches high, heavily built, and dressed in worn clothes. He recollects distinctly, and asserts most positively, that this man wore a heavy black mustache. He did not recollect the color of his eyes, his hair, or any of his clothes, nor knew whether he wore an overcoat. He says (pointing to Spangler), "If that man had a mustache, it would be just the appearance of the face exactly."

It is fortunate for the accused that this witness states with certainty three circumstances, by means of which the theory that this man was Spangler has been completely overthrown.

1. He says (six times in the course of his evidence) that the man he saw had a mustache, and said also it was black and heavy.

Miles, Sleickman, Burroughs, Maddox and Gifford, witnesses for the prosecution, who all saw Spangler during the

play, said he wore no mustache then, and they never saw him wear one. Maddox saw him in his place three or four minutes before the assassination and then he wore none. Buckingham, Withers and Ferguson, witnesses for prosecution, and Goenther, Harry Ford and others, for defense, who saw him daily, say they never saw him wearing a mustache. If he had been in front of the theater that night for three-quarters of an hour, wearing a heavy black mustache, red-headed as he is, no one can doubt that many of the employees and habitués of the theater who knew him would have noticed his grotesque disguise, and having their attention drawn to the subject by the daily publication of testimony on this point, would have offered themselves as witnesses against him.

2. Sergeant Dye also says this man remained on the pavement just at the front entrance of the theater constantly from twenty-five or thirty minutes past nine until ten minutes past ten by the theater clock, including a part of the second act, the whole interval between the second and third acts, and that part of the third act before ten minutes past ten—for he speaks of the “rush” coming down to drink after he had been there some time, and returning some time before he left.

If the man had been Spangler, Buckingham, the door-keeper, who was at the ticket window all the evening, would in all probability have noticed him; or Maddox, who was in front of and in the ticket office during the evening, but neither saw him. During all the interval between the acts, before he held Booth's horse, Burroughs (Peanuts) was in front of the theater, but did not see him. Sleickman was in front ten or fifteen minutes before the close of the second act, and he did not see him there; nor did Debonay, who was on the pavement front about five minutes before the assassination.

Gifford, on cross-examination, says he was in front of the theater during the performance of the second act. He did not see Spangler in front of the theater.

We have not only this negative evidence of persons who were in front of the theater, or in the passage during the

time named by Sergeant Dye, but we have also further negative evidence on the same point in the fact that Spangler is shown, by many witnesses, not to have been missed from his place that night, and that his duties on the stage were such as to require his constant presence at his post, and make an absence of three-quarters of an hour impossible, without marring the place and attracting attention of employees and actors to the fact of his absence. On this point John T. Ford, the proprietor of the theater, says:

His duties were such as to require his presence upon the stage during the whole of the play. His absence for a moment might imperil the success of the play, and cause dissatisfaction to the audience. It is very important to the effect of a play that the scenery should be well attended to in all its changes; and he is absolutely important there every moment from the time the curtain rises until it falls. There are intervals, it is true, but he can not judge how long or how brief a scene may be. His duties in the intervals between the scenes were to be prepared for the next change; to be ready at his scene; to remain on the side where the stage carpenter had assigned him as his post of duty. Emergencies often arise during an act that require extra service of a stage hand.

But, though the negative evidence above referred to would, in my opinion, be quite sufficient to relieve Spangler of the suspicion of being the person seen by Sergeant Dye, fortunately an alibi is shown conclusively by the concurrent testimony of many witnesses for the prosecution and the defense, which testimony shows, beyond all doubt, that he was not only not in front of the theater in consultation with Booth, but was, throughout the play, until the fatal shot, at his post on the side opposite and most remote from the passage and the door by which the murderer escaped—on that part of the stage, where, from his position, he would be least able to aid the villain's flight.

John Miles (colored) says he saw Booth ride up to the back door about three-quarters of an hour before the President was shot, and heard him call Spangler three times; and that he looked down from the "flies" and saw Spangler in his place, shoving a scene across on the second groove. Debonay says:

When Booth rode up he came to the alley door and called for Spangler; he called me first; but whether he came on a horse or not, I do not know. He said to me, "Tell Spangler to come to the door and hold my horse." I did not see a horse, though.

I went over to where Mr. Spangler was, on the left hand side, at his post, and called him from his post. Said I, "Mr. Booth wants you to hold his horse." He then went to the door, went outside, and was there about a minute, and Mr. Booth came in. He asked me if he could get across the stage. I told him no, the dairy scene was on; that he would have to go under the stage, and come up on the other side. About the time that he got up on the other side, Spangler called to me, "Tell Peanut John to come here and hold this horse; I have not time; Mr. Gifford is out in the front of the theater, and all the responsibility of the scenes lies on me." I went on the other side and called John, and John went there and held the horse, and Spangler came in and returned to his post again. I saw Spangler three or four times that evening on the stage in his proper position. It was between and during the acts about the time the shot was fired. He was on the same side I was on—the same side as the President's box.

I saw Spangler that night pretty nearly every scene. If he had not been there I should certainly have missed him; do not recollect of seeing him away from the flats at all. He may have been away, but I cannot say. I saw Spangler very shortly before the shot. I saw him standing at his wing when I crossed the stage with the will, while the second scene of the third act was on.

He was standing when I heard the pistol fired in the center of the stage. Spangler was at the same place, just about ready to shove off the scenes, and I was standing there and listening to the play. I was nearest the door.

Henry M. James says:

I was standing ready to draw off the flat, and Mr. Spangler was standing opposite to me on the stage at the time I heard the shot fired. I nor Spangler could see the President's box nor the front part of the stage on which Booth jumped.

Gifford says:

I was on the stage until the curtain went up at each act. When the curtain was down I would go around on to the stage, to see that everything was right, and then go out again. At what times during that evening, when I came on the stage between the acts I saw Spangler? I could not state the time. Should judge the last time I saw him was at about half-past 9 o'clock. I saw him each time I came on the stage. He was my subordinate.

Thus we have Miles and Debonay, who saw him at his place when Booth called for him; Debonay, who saw him in his

proper place three or four times after that, before the assassination, "between and during the scenes;" Maddox, who saw him "pretty nearly every scene;" Ritterspack and James, who saw him "where he ought to be to do the work he had to do, behind the scenes ready to shove his flat, at the moment the shot was fired;" James, who during the play, "had often seen him, every time there was anything to do there;" and Gifford, who was on the stage between each act, and each time saw his subordinate there, once, twenty minutes before the assassination.

If any member of this court should be called on two months hence to prove his presence here during any hour of this day's session, he could hardly bring as much positive evidence, or more or better negative evidence of the fact, than has been presented here to show that Spangler was on the stage throughout the hour preceding the assassination. Either the positive or the negative evidence on this point taken alone shows beyond a possibility of doubt that it was not Spangler whom Sergeant Dye saw in front of the theater from half-past nine till ten minutes past ten that night.

I do not mean at all to discredit Sergeant Dye's testimony as to seeing a man in front of the theater that night in consultation with Booth, or as to that man resembling Spangler. Greenawalt says a man, who called himself Thomas, came to the Pennsylvania House at two o'clock that night and stayed until morning, who resembled Spangler "somewhat;" but that he had darker hair, cut down half over his ears, was of heavy body, wore a black heavy mustache, and "his beard came front, and was cut down from the mustache up; but it was either that way or whiskers all round. I know he had whiskers in front." He describes him, too, as wearing a black, worn slouch hat, such as Sergeant Dye describes the man in consultation with Booth to have had, being the only article of clothing either Greenawalt or Dye describes. It is highly probable both saw the same man. That Spangler is not the man Greenawalt saw is certain from his description of his person, and also from the fact that Spangler slept in the carpenter shop adjoining the theater that night. (Carland.)

I have thus presented to the Court all the evidence taken before it on both sides, which in any way illustrates the acts done and words spoken up to the moment of the assassination, having any relation to the accused. I will now proceed to discuss the evidence as to his conduct from that moment to his arrest, on the 17th of April.

Colonel Stewart says that he pursued Booth through the passage which passes between the green and dressing rooms and the stage, and got within twenty feet of the back door at the end of the passage, when Booth dashed out, and the door slammed shut; that he reached the door next after Booth, and opened it and rushed out; that in the passage he passed several actors and actresses, who were greatly agitated; that instantly after the door slammed shut he saw a man within three feet of the door, who seemed composed, and was turning from the door toward him; "that that man resembled Spangler more than he did any of the other prisoners; Spangler makes the impression of that man's visage as I caught it as I was going along very rapidly."

He does not undertake to swear positively that that person sitting there was the person he saw. He says he sees no person among these prisoners who calls to mind the appearance of that person except the one he is told is Spangler.

Colonel Stewart further says that he thinks the person had some beard, but not heavy enough to attract marked attention, and was in a position where he might have shut the door. But the Court will recollect that the person described was turning in just the opposite way from that in which a man's body would naturally be turned by the act of slamming the door.

This testimony is not of much value on this point:

1. Because Captain Stewart does not recognize the prisoner as the man, and because he describes the person he saw as having beard, which the prisoner had not.

2. Because he could not, in the nature of things, recognize the stranger he so hurriedly saw, were he to see him again.

3. Because Ritterspack says he saw Booth open the door

and shut it, and that he was then the first who opened the door after Booth, and he left it open, and that a very large man (Capt. Stewart) followed him. The evidence of Ritterspack, on this point, is strengthened by that of Ferguson and Smith, who testify that Booth ran off the stage before Stewart got on it, and that Stewart turned and looked up at the President's box before pursuing Booth.

4. Because Ritterspack says Spangler was on the other side of the stage, near the center, behind the scenes, when the shot was fired, and did not go to the door. James' testimony strengthens Ritterspack's on this point. Both were in view of Spangler when the shot was fired, and between him and the door, and he could not have gone to it without their seeing him go. Neither saw him move.

2. Ritterspack says when the shot was fired Spangler was standing behind the scene waiting the time to shove in, and he was between him and the door, listening to the play. That he could not tell what had happened, for neither he nor Spangler could see the President's box, nor the front of the stage, where they stood. That some cried, "Stop that man!" That after he rushed out and returned, Spangler was standing in the same place, and "looked the same as if he was crying, a kind of scared." He then hit me on the face with the back of his hand, and he said, "Don't say which way he went." I asked him what he meant by slapping me in the mouth, and he said, "For God's sake, shut up;" and that was the last he said.

Gifford, to whom Ritterspack says he told this at Carroll Prison, says he only told him he had forgotten to tell something in his first examination, and that he (Gifford) certainly would have recollected this had it been told him. Carland, to whom Ritterspack said he told it on the night of the assassination, says he told him that he said to Spangler, as Booth ran along the passage, "That's Mr. Booth;" and Spangler slapped him and said, "You don't know who it is—it may be Mr. Booth, or it may be some one else." Lamb, to whom Ritterspack said he told it next day, says he told him substantially the same he told Carland the night before,

and says that Ritterspack was grumbling at Spangler for slapping him. All three of these witnesses assert most positively that Ritterspack did not represent Spangler as saying, "Don't say which way he went."

At the time Ritterspack told these gentlemen of the conversation with Spangler, the theater had been taken possession of by the military authorities, and general suspicion directed to the employees, under the belief that Booth had accomplices among them. Each employee was doubtless scanning the reported conduct of his fellows, and especially that of Burroughs and Spangler, Booth's horse holders. Ritterspack's statement was one they would be likely to weigh and recollect. If Carland and Lamb recollect aright what Ritterspack told them, there can be no question but that his statement of the conversation, made on the witness stand, is incorrect. For if the conversation did occur between him and the accused, he would recollect and tell it more exactly that night and next day than he would after undergoing a month's confinement, and alarm, and detective discipline, in Carroll Prison.

The evidence of Dabonay, in his second examination, tends strongly to show that Spangler had shoved his scene back and got on the front of the stage before Ritterspack could have returned and held the reported conversation. He says:

When the shot was fired in the theater, was standing on the left-hand side, first entrance, the side the President's box was on. The first time I saw Spangler he was moving his scene, I think. They shoved the scene back to give the whole of the stage to the people who came on. It was about a minute and a half or two minutes after Mr. Stewart had left. I think he had just about time to get to the back door before they shoved the scenes. Spangler came in front on the stage, with the rest. There was a cry for water, and I started to the green room, and he started the same way. About half a dozen of us went to get some water to carry it to the private box.

Maddox says he saw Booth just as he left the stage, and that he then "ran on the stage and heard the call for water."

This evidence of Debonay and Maddox, and the statements of Carland and Lamb, and the strong improbability of Span-

gler's standing still amid the great commotion, render it nearly certain that Spangler was not in his place behind the scene when Ritterspack returned; and that if anything was said between them, it was as stated by Ritterspack to Carland and Lamb. If that be so, of what significance were Spangler's acts or words? He was not in position to see Booth when he jumped on the stage, and ran off, for the scene between them. He heard nothing but the shot, followed by the cry, "Stop that man," as the assassin, bending forward, hatless, fled through the bewildered crowd in the narrow passage opposite. How would he know it was Booth instantly, when Booth's name had not then been called (Ritterspack), and when men who knew Booth well, and saw him leap on the stage and face the audience in the glare of the foot-lights, shouting "*Sic Semper Tyrannis!*" before he fled, did not recognize him? (Gobright.) And if he did recognize Booth, how could he know what had been done? And what could be more natural or apparently innocent than his telling Ritterspack, who cried out, "That's Mr. Booth!" "Shut up, you don't know who it is. It may be Mr. Booth and may be some one else!"

But even if Ritterspack's last statement be true (which I think it clearly is not), and Spangler was still standing behind the scene, and said, "Shut up, don't say which way he went!" "For God's sake, shut up," he only knew that Booth had fled, and was being pursued. He had seen nothing, and was stunned by the clamor and excitement. He, probably, did not think that Booth had committed crime, or know what crime had been committed, or how Booth was connected in it. It was a stupid, ineffective exclamation—for Ritterspack was not then pursuing Booth, but dozens of others were.

But whatever view we take of Ritterspack's evidence, Captain Stewart's faint recognition of Spangler as the man he met at the door, falls to the ground, for Withers, who knows Spangler well, and saw Booth open and shut the door, did not see Spangler there, and from Spangler's position when the shot was fired, as sworn to by both Ritterspack and James, who were both between him and the door, and who

did not notice him move, it is certain he was not at the door when Stewart ran down the passage.

3. After the assassination, John Miles (colored) came down from the flies, three stories above the stage, and met Spangler and several others at the back door, "and I asked him who it was that held the horse, and he told me to 'hush, not to say nothing,' and I did not say anything more, though I knew who it was, because I saw the boy (Peanuts) holding the horse. He said, 'hush, don't say anything to me,' or 'hush, don't say anything about it.'"

Mary Jane Anderson (colored) says that a short time after Booth had gone, she went to the door of the theater, where some people were standing, and said to Mr. Spangler, "That gentleman (Booth) called you, and he said, 'no he did not—he did not call me,' and I said, 'he did call you,' and I kept on saying so. With that he walked down the alley." It was probably not fear of the authorities, but of the infuriated people, which led Spangler to this effort to conceal the fact that Booth called him, and that he took the horse. It is as consistent with the theory of his innocence as of his guilt, and therefore amounts to nothing.

4. Carland says Spangler usually slept in the theater—that on Friday night he slept in the carpenter shop, which is part of the theater building. Lamb says he was in the theater all day Saturday, and saw Spangler there through the day. Carland says Spangler slept in his room Saturday night, adjoining the theater, saying there was talk of burning the theater, and he was "afraid to stay in it alone, as he was a heavy sleeper;" and that he was arrested there that night and discharged Sunday morning. Sunday afternoon he saw him again, near the theater, and went with him visiting some friends; and there, hearing that he was to be arrested again, he (Spangler) went to the Detective Police office and learned it was not so. During this time he had no money. He was arrested Monday, and up to that time was at his meals, as usual, at a boarding house where he had taken them for five or six months (Boigi, Goenther), and where his carpet-sack remained, with the rope in it.

During these three days and nights there is not a word or act of Spangler's shown in evidence which does not indicate a consciousness of innocence.

There are several circumstances and general considerations I will now present to the Court remotely affecting the case of the accused, and with it the question of the probable complicity of any of the men connected with the theater in the horrid crime of the conspiracy.

It will be recollected that Chester, the New York actor, says that in the latter part of December, or early in January, Booth solicited him to engage in a scheme to capture the President, and said he proposed to do it at Ford's theater, which the President frequently visited, and that he wanted him to open the back door at a preconcerted signal, "and that it must be some one connected or acquainted with that theater who could take part in it." I offered to show that by the "some one connected or familiar with Ford's theater," was meant Chester himself, by showing Booth's repeated solicitations to Ford, in January and February, to employ that actor, but the Judge Advocate objected, and the objection was sustained. That inference, however, is clearly deducible from Chester's own statement.

I also proposed to show that from its construction an escape could be more readily made from the private boxes of Ford's theater, than from those of the other principal theaters here; but the Judge Advocate again objected, and this objection was sustained.

It is fit I should advert to these rulings of the Court, to show it that if Chester's evidence is without explanation, it is so by reason of its own rulings. I do not feel, however, that, as it stands, that evidence is of weight against the accused. It is rather in his favor, for the only thing Chester said Booth wanted him to do is a thing which Spangler could easily have done, without of itself attracting suspicion, and which would have greatly aided Booth's escape, but which Booth did for himself—opening the back door after the shot was fired.

It has been generally thought that Booth could not have accomplished the crime and then escape without one or more accomplices employed about the theater. I feel safe in saying not only that it does not appear he had one, but also that it does appear he did not need one.

1. Booth was an actor of some distinction, who had played at Ford's, and had, through professional courtesy, as well as his engaging manners, free access to the theater at all hours and by every entrance, when it was open. He had, therefore, abundant opportunities to make his preparations about the President's box, unobserved and unaided.

2. The leap from the box needed no rehearsal. It is one which any man of good strength and action could make with safety. Had it not been—apparently through a providence of God—that the villain's spur caught in the folds of one of our country's battle flags, which adorned the box, he would have made the leap with ease. John T. Ford says:

The leap from the box upon the stage would not be a difficult one for him. He excelled in everything of that kind. He had a reputation for being a great gymnast. He introduced, in some Shakesperian plays, some of the most extraordinary and outrageous leaps, deemed so by the critics and condemned by the press at the time.

3. The passage leading to the alley door, by which Booth escaped, was always kept clear of furniture and other obstructions during the play. Hess, Gifford, Maddox, James, Ford and others testify, most emphatically, to that. C. D. Hess, the manager of Grover's theater, a rival of Ford's, says it is customary in theaters to keep the passage-way between the scenes and the green-room and the dressing room clear.

And John T. Ford says:

Spangler would not be charged with the duty of keeping the passageway in order unless specially assigned to him by the stage carpenter; he was subordinate entirely to the stage carpenter. That passageway should never be obstructed. My positive orders are to keep it always clear and in the best order. It is the passageway used by all the parties coming from the dressing rooms. Where a play was performed like the American Cousin, the ladies were in

full dress, and it was absolutely necessary that there should be no obstruction there, in order that the play should be properly performed. Coming from the dressing rooms and the green room of the theater everyone had to use that passage.

I have no doubt that Booth, knowing the passage would be clear, was confident that, with his bowie-knife drawn, he would meet with no resistance from the unarmed men and women who might flock from the green-room in wonder and amazement at the shot and shouts. If so, he would not have wanted or provided any help, except some one to hold his horse, which "Peanuts" did, and some one to open the door for him and shut it on his pursuers, which nobody did but himself.

4. C. D. Hess, the manager of Grover's theater, says:

I was in the habit of seeing Booth during the last season before the assassination of the President very frequently. He came into the office some time during the afternoon of the day before the assassination and entered into conversation on the subject of the illumination of the city on Thursday night. Asked me if I intended to illuminate; told him yes, but the next night would be my great night, that being the celebration of the fall of Sumter. He asked me, "Are you going to invite the President?" My reply was, "Yes, that reminds me I must send that invitation."

It struck me as rather peculiar, his entering in the manner that he did; he must have observed that we were busy, and it was not usual for him to come in and take a seat unless he was invited.

It is probable from this that Booth would have attempted the assassination of the President in Grover's theater, had he gone there instead of to Ford's on that fatal night; and it tends to show that he had no accomplices at either theater.

I have now presented to the Court every point in the evidence which seems to me may, by any possibility, be relied on as indicating guilty knowledge of or participation by Spangler in the conspiracy, or any of its crimes. From the natural partiality of a counsel to his client, I may not have noticed all that bears against him, or presented it in its true light, but I have earnestly sought, in

this discussion, to show all that is of weight for or against him, extenuating nothing. I can see in the evidence no ground for such suspicion as would, in the civil courts, lead a grand jury to present him for trial, and believe that, so far from his guilt being established beyond a reasonable doubt, a review of the evidence will leave, in few candid minds, a reasonable doubt of his innocence.

THE TRIAL OF DR. SAMUEL A. MUDD, FOR CONSPIRACY AND MURDER, WASHINGTON, D. C., 1865.

THE NARRATIVE.

The facts that convicted Dr. Mudd¹ as one of the conspirators were that he was personally acquainted with Booth before the murder and had been seen in company with him and some of the assassins upon several occasions, and that he set Booth's leg, knowing that it was he, though positively denying it to the detectives who came to his house to inquire if Booth had been seen in that neighborhood. On the morning after the assassination it will be remembered (ante, p. 29) Booth's second halting place was Dr. Mudd's house, which Booth and Herold reached about two a. m. Dr. Mudd himself admitted them to his house, and they remained there nearly all day. He set Booth's broken leg, had a crutch made for him and gave him a razor with which to remove his mustache, and when the time came for the men to leave, accompanied them some distance along the road. Three days afterward Lieutenant Lovett came to Mudd's place, having traced the assassins to that point. To him Dr. Mudd denied all knowledge of Booth, saying that he had heard of an eminent tragedian by the name of Edwin Booth, but he did not know John Wilkes Booth. The detectives left, but returned in a few days and arrested Dr. Mudd, who now confessed that he knew Booth and Herold when they came to his house and that he had been intro-

¹ Dr. Samuel A. Mudd was 45 years of age, tall and thin, with sharp features, a high bald forehead, astute blue eyes, compressed pale lips and sandy hair, whiskers and mustache. He was a strong Southern sympathizer, and in the community in which he lived was held in esteem as an honorable gentleman. (Oldroyd, p. 140.)

duced to Booth in the Fall of 1864 by a man named Thompson.²

In November, 1864, Booth was in Charles County, Md., inquiring about lands in that neighborhood. He stopped a day or two with Dr. Queen, to whom he had a letter of introduction from a person in Canada. Dr. Queen and his son-in-law, Thompson, attended church near Bryantown, and Booth sat with them in Dr. Queen's pew. Here Booth and Dr. Mudd first met, being introduced by Thompson. Booth again visited this part of the country the following month, stopping again with Dr. Queen over night.³ About this time he inquired of Dr. Bowman as to the price of land and the roads in the vicinity, and a few days later Dr. Bowman said to Dr. Mudd: "I am going to sell my land." Dr. Mudd asked to whom he expected to sell, and Bowman said: "To a man by the name of Booth, who said he was coming down soon." Dr. Mudd then said: "That fellow promised to buy mine."⁴ Booth had no intention of buying lands; he simply wanted to familiarize himself with the roads and the people in whom he could trust.

In December, 1864, Louis Weichmann with John H. Surratt were walking on the street when they met Dr. Mudd in the company of Booth and the former introduced him to Booth, who invited them to his room at the National Hotel. They all went there and remained nearly an hour. Dr. Mudd and Booth went out of the room together for a time and Weichmann observed Booth drawing lines that looked like roads on the back of an envelope, and showing them to Dr. Mudd.⁵ Again in March, a guest at the hotel was disturbed by a stranger entering his room and on seeing his mistake exclaimed, "I thought this was Mr. Booth's room." The intruder was Dr. Mudd.⁶

² Alex. Lovett, pp. 93, 433; Col. H. H. Wells, pp. 179, 425.

³ John C. Thompson, p. 433.

⁴ Dr. W. T. Bowman, p. 433.

⁵ Louis J. Weichmann, pp. 220, 433.

⁶ Mr. Norton, pp. 142, 318.

THE TRIAL.

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,⁷ President.⁸

May 13.

The prisoner, *Samuel A. Mudd*, had been previously charged with being a member of the general conspiracy and that he did "advise, encourage, receive, entertain, harbor, and conceal, aid and assist the said John Wilkes Booth, David E. Herold, Lewis Payne, John H. Surratt, Michael O'Laughlin and Samuel Arnold and their confederates, with knowledge of the murderous and traitorous conspiracy aforesaid and with the intent to aid, abet and assist them in the execution thereof and in escaping from justice, after the murder of the said Abraham Lincoln, in pursuance of said conspiracy."⁹

He pleaded *Not Guilty*.¹⁰

Judge Advocate General *Holt*¹¹ and Assistant Judge Advocates *Bingham*¹² and *Burnett*¹³ for the Government.

Thomas Ewing, Jr.,¹⁴ for the prisoner.

THE TESTIMONY FOR THE PROSECUTION.

Col. H. H. Wells. The week after the assassination I had three interviews with Dr. Mudd. He said about 4 Saturday morning, April 15, he was aroused by a loud knock on his door. From his window he saw in his front yard a person holding two horses, on one of which a man was mounted; the former said that the man on the horse had broken his leg and wanted med-

ical assistance; that he helped to bring him in and lay him on a sofa and then carry him upstairs to a bed in the front room. He examined his leg, and found that the front bone was broken, nearly at right angles, about two inches above the instep, as slight a breaking as it could possibly be. He also said he had a pain in his back. Found no apparent cause for the pain, unless

⁷ See p. 34.

⁸ For the other members of the Court, see p. 33.

⁹ See p. 40.

¹⁰ See p. 40.

¹¹ See p. 35.

¹² See p. 35.

¹³ See p. 36.

¹⁴ See p. 40.

it might have been in consequence of his falling from his horse, as he said he had done. He dressed the limb as well as he was able, and called a white servant to make a crutch for him. At breakfast the younger of the two persons partook with them. After breakfast, said Dr. Mudd, his patient seemed much debilitated and pale to such an extent that he was unable to tell what his complexion might have been, light or dark. He said the persons remained until some time after dinner. Started out to see if a carriage could be procured at his father's, but meeting his younger brother, he ascertained from him that the carriage could not be procured, and then rode on to join the young man who had gone ahead, and together they rode into the pines a mile and a half beyond the elder Mudd's house. The young man remarked that he would not go further to get a carriage, but would go back to the house and see if he could get his friend off in some way or other. Dr. Mudd then went, he said, to the town, to see some friends or patients, and then returned to his house. As he came back he saw the younger man of the two pass to the left of the house toward the barn.

Said he did not recognize the wounded man. I exhibited to him a photograph of Booth, but he said he could not recognize him from that photograph.

He said he had been introduced to Booth at church, some time in November last, as wanting to buy farming lands, and that they had some little conversation on the subject of lands. Booth asked if there were any

desirable horses that could be bought in the neighborhood cheaply; and Mudd mentioned a neighbor of his who had some horses that were good drivers; that Booth remained with him that night, and next morning purchased one of those horses; he admitted he could now recognize the person he treated as the same person he was introduced to—Booth. He had never seen Booth from the time he was introduced to him in church until that Saturday morning. Herold he had not before seen.

He thought there was something strange in these two persons, from the young man coming down shortly after breakfast and asking for a razor, saying his friend wished to shave himself; and when he was upstairs shortly afterward, he saw that the wounded man had shaved off his moustache. The wounded man had a long, heavy beard; whether natural or artificial he did not know. He kept a shawl about his neck, seemingly for the purpose of concealing the lower part of his face; said he first heard of the murder either on Sunday morning or late on Saturday evening.

Said that Herold—for by that name we spoke of him after the first explanation—asked him the direct road to Dr. Wilmer's, saying he was acquainted with the Doctor. Dr. Mudd described the main traveled road, and was then asked if there was not a nearer way. He replied that there was a road across the swamp, and described it.

Dr. Mudd pointed out to me the track they took, and I went with him a long way into the marsh, and across it on to the

hill, where, instead of keeping straight on, they turned square to the left, across a piece of plowed ground, and there all trace of them was lost.

Cross-examined. Dr. Mudd's manner was very extraordinary; he did not seem unwilling to answer a direct question; seemed embarrassed, and at the third interview alarmed; found that, unless I asked direct questions, important facts were omitted; first saw him on Friday, the 21st, and my last interview was on Sunday. We had a dozen interviews in all; at the last interview I told him he seemed to be concealing the facts of the case, which would be considered the strongest evidence of his guilt, and might endanger his safety.

My impression is Dr. Mudd said he had first heard of the assassination on the Saturday evening; that somebody had brought the news from Bryantown. He said there had been paid to him \$25 for setting the wounded man's leg.

He said that he had told Dr. George Mudd on Sunday that there had been two suspicious men at his house.

To the *Judge Advocate*. Understood Dr. Mudd to mean that he recognized the wounded man, while at his house, to be the Booth to whom he had been introduced in November. His expression was that he did not recognize him at first, but on reflection, he remembered him as the person to whom he had been introduced.

He said that, as he came back in the afternoon, he saw the wounded man going away from the house, hobbling through the mud. Herold had been riding the bay horse, and was going off

on it. The roan horse, he supposed, was in the stable.

To *Mr. Ewing*. The words used by Dr. Mudd, in reference to recognizing Booth's photograph, were that he should not have recollected the man from the photograph; that he did not know him or remember him when he first saw him; but that on reflection he remembered that he was the man who was introduced to him in November last; he did not say whether this reflection occurred before or after the man left; but the impression made on my mind was that it was before the man left; gave as the reason for not remembering him at first that the man was very much worn and debilitated, and that he seemed to make an effort to keep the lower part of his face disguised; but of course the open light of day, the shaving of the face, and the fact that he sometimes slept, gave better opportunities for observation.

Mary Simms (colored). Know prisoner yonder, Dr. Samuel Mudd (pointing to the accused, Samuel A. Mudd); was his slave, and lived with him four years; left him about a month before this Christmas gone; heard him talk about President Lincoln. He said he stole in there at night, dressed in woman's clothes; that they lay in watch for him, and if he had come in right they would have killed him. He said nothing about shooting him; he would have killed him, he said, if he had come in right, but he could not; he was dressed in woman's clothes.

A man named John Surratt and a man named Walter Bowie, visited Dr. Mudd's last summer. He came very often. Dr. Sam-

uel Mudd and his wife both called him Mr. Surratt. He was there almost every Saturday night to Monday night; and when he would go to Virginia and come back he would stop there; did not sleep at Dr. Mudd's, but out in the woods. Besides him, there was a Captain White, from Tennessee; a Captain Perry, Lieut. Perry, Andrew Gwynn, Benjamin Gwynn, and George Gwynn; they all slept in the woods. When they came to the house to eat, Dr. Mudd would put us out to watch if anybody came; and when we told them somebody was coming, they would run to the woods again, and he would make me take the victuals out to them; would set them down, and stand and watch, and then the rebs would come out and get the victuals. Surratt and Andrew Gwynn were the only two that I saw come out and get them.

Some men that were lieutenants and officers came from Virginia, and brought letters to Dr. Sam Mudd; and he gave them letters and clothes and socks to take back. They were dressed in gray coats, trimmed up with yellow; gray breeches, with yellow stripes down the leg. After Dr. Mudd shot my brother, Elzee Eglent, one of his slaves, he said he should send him to Richmond, to build batteries.

Cross-examined. Dr. Mudd never slept in the woods, only the men that used to come there; the bed-clothes were taken out into the woods to them.

Saw Mr. Surratt there a dozen times last summer; do not think he slept in the house any time; none of them ever did but Watt Bowie; last time I saw Mr.

Surratt there, apples and peaches were ripe. Mr. William Mudd, Vincent Mudd, Albur Brooke and Albert Mudd saw Mr. Surratt there; they all visited the house while the rebs were about.

Elzee Eglent (colored). Know Dr. Samuel Mudd; was his slave and lived with him; saw men come to Dr. Mudd's, dressed some in black clothes and some in gray; gray jackets, coat-like, and gray breeches; Andrew Gwynn, I had seen before; the others I did not know. They used to sleep in the woods, about a quarter of a mile off; come to the house and go back to the woods; I don't know where they got their victuals, but I have seen victuals going that way often enough; I have seen my sister, Mary Simms, carrying meals to them.

Sylvester Eglent (colored). Used to live about a quarter of a mile from the house of Dr. Samuel Mudd with his father. Last August, a twelvemonth ago, heard him say he was going to send me, Elzee, my brother, Frank, and Dick Gardner, and Lou Gardner to Richmond to build batteries.

Melvina Washington (colored). Used to live with Dr. Samuel Mudd; was his slave; left him this coming October two years. The last summer I was there, heard him say President Lincoln would not occupy his seat long. There was a heap of gentlemen in the house at the time; do not know who they were. Some had on gray clothes, and some little short jackets, with black buttons, and a little peak on behind. Sometimes they stayed in the house, and sometimes slept in the pines not far from Dr.

Mudd's spring. Dr. Mudd carried victuals to them sometimes; once he sent them by Mary Simms.

Heard Dr. Mudd say one day, when he got mad with one of his men, that he would send him to Richmond.

Cross-examined. Those men in the woods were there for a week or more, and they went away in the night; I do not know where to, and never saw them there at any other time; do not know the names of any but Andrew Gwynn; do not know of any white people that saw these men but Dr. Mudd and his wife, and two colored women, Rachel Spencer and Mary Simms.

Milo Simms (colored). Was a slave of Dr. Samuel Mudd, and lived with him; left his house on the Friday before last Christmas; last summer I was there; saw two or three men there, that sometimes stayed in the house and sometimes out by the spring, up among the bushes. They had on plaid gray clothes, and one had stripes and brass buttons on. They got their victuals from Dr. Samuel Mudd's; sometimes he carried them out himself, and sometimes my sister carried them. She would lay them down at the spring, and John Surratt or Billy Simms took them away; heard John Surratt called by that name in the house.

Last year, about tobacco-planting time, I heard Ben Gardiner tell Dr. Samuel Mudd, in Beantown, that Abe Lincoln was a God damned old son of a bitch, and ought to have been dead long ago; and Dr. Mudd said that was much of his mind.

Cross-examined. Worked in the field, but sometimes was at

the house to take the horses from the men who came there; reckon I am about fourteen years old.

Rachel Spencer (colored). Was a slave of Dr. Mudd; left his house in January last.

Remember five or six men being there at one time last summer; think they were dressed in black and blue. Some of them slept in the pines near Dr. Mudd's spring. They got their victuals from his house; Dr. Mudd took them out himself sometimes. I only remember the names of Andrew Gwynn and Walter Bowie.

Cross-examined. Those men that were at Dr. Mudd's last summer came all together, stayed about a week and went away together. Albion Brooke was there at that time; he used to go with them; they were always together.

William Marshall (colored). Was a slave until 1863, when I got away from home; belonged to Mr. Willie Jameston; have lived near Dr. Samuel Mudd; know Benjamin Gardiner, one of his neighbors; he was my wife's master.

On Saturday, soon after the battle at the Rappahannock, I happened to be home. My wife being sick, the Doctor had been to see her, and when he came out Mr. Gardiner met him at the corner of the house, and said to him, We gave them hell down on the Rappahannock; and the Doctor said, Yes, we did. Then he said, Damned if Stonewall ain't the best part of the devil; I don't know what to compare him to. The Doctor said Stonewall was quite a smart one. Then Benjamin Gardiner said, Now he has gone around up in Maryland,

and he is going to cross over on the Point of Rocks, and I would not be the least surprised if very soon from this he will be down here and take the capital of Washington, and soon have old Lincoln burned up in his house; Dr. Mudd said he would not be the least surprised.

Daniel J. Thomas. Some time in the latter part of March, had a conversation with Dr. Mudd at John S. Downing's about a mile from Dr. Mudd's. I made a remark to Dr. Mudd that the war would soon be over; that South Carolina was taken, and I thought Richmond would soon be, and that we would soon have peace. He then said that Abraham Lincoln was an abolitionist, and that the whole Cabinet were such; that he thought the South would never be subjugated by abolition doctrine, and he went on to state that the President, Cabinet, and other Union men in the State of Maryland would be killed in six or seven weeks.

Cross-examined. He did not seem to be joking, but it is impossible for me to say whether or not he was earnest in what he said; should think a man was in earnest to talk of the President being assassinated; did not think any such thing would ever come to pass. I thought the President was well guarded, and that it was a want of sense on his part saying so. I laughed to think that the man had no more sense. After hearing that Booth was at his house, I thought he really meant it.

Spoke of what Dr. Mudd had said to almost everybody I saw, but everybody laughed at the idea of such a thing; told Mr. Lemuel Watson, a good Union man, of

this conversation before the assassination; also wrote to Colonel Holland, Provost Marshal, but never received an answer from him; mentioned the conversation I had with Dr. Mudd, after the assassination to my brother, Dr. M. C. Thomas and Mr. Peter Wood, and to several others in Bryantown, when they were looking for Booth.

Two or three weeks after this conversation, but before the assassination, I mentioned it to Mr. Downing. He said he did not hear it, and he said, Well, if that be the case, I am glad I was not in there; thought if he had heard it he would not have said anything about it. Mr. Downing said it was only a joke of Dr. Mudd's; that he was always running on his joking ways.

I had said to Dr. Mudd that he, having taken the oath, ought not to say such things about the President. He said he did not consider the oath worth a chew of tobacco.

Told my brother of the conversation I had had with Dr. Mudd at Church or before Church; told Mr. Watson when he was at my mother's one day. When I mentioned it to him, he laughed heartily; he said, Dr. Mudd only did that to scare you. Everybody knows that such a thing is never going to come to pass.

Was at William Watson's door yard, near Horsehead on 1st of June, with John R. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson, and William Watson, when James W. Richards, the magistrate rode up. I did not state to Mr. Richards that I had been asking any of these gentlemen

for a certificate to the fact that I was the first to give information which led to the arrest of Dr. Samuel Mudd, and that if they would give me a certificate I should be entitled to the reward of \$10,000; what I did say was, that I had been told in Washington, by some of Colonel Baker's men, that I was entitled to so much reward if Dr. Mudd was convicted. I said that I never expected or looked for a cent, but that I would be very glad to receive the reward if it were so; knew these fellows said it in a joke, and I told it as a joke; did not tell Mr. Richards that I had been saying that I was the person who gave the information that led to the arrest of Dr. Mudd.

Did not say to Eli J. Watson, on the 1st of June, before meeting these gentlemen, that I wanted him to certify that I had been the cause of the arrest of Dr. Mudd or that I had given any information which led to his arrest, and for which I was entitled to \$25,000; never did give any information which led to the arrest of Dr. Mudd. Dr. Mudd was arrested before I knew it; never thought of such a thing as being entitled to a reward.

William A. Evans. About 1st or 2nd March last saw Dr. Samuel Mudd drive past me as I was driving to the city in the morning about eight miles from the city. I followed him up to the city, never losing sight of him.

Cross-examined. Have seen Dr. Mudd at different times for fifteen years, though never introduced to him. Last winter saw him go into the house of Mrs. Surratt on H street; asked

a policeman and a lady who was on the sidewalk, whose house it was, and was told it was Mrs. Surratt's; had seen rebels going in there—Judson, Jarboe and others—and I wished to know who lived there. It was a brick house, two stories and an attic, and between the Patent Office and the President's house.

(The witness, at the request of the counsel, described Mrs. Surratt's house and neighborhood, but did it somewhat indefinitely.)

Was in my buggy when I passed Mrs. Surratt's house. Dr. Mudd had on dark-colored clothes with some kind of dark-brown overcoat, and a dark slouch hat.

When I saw Dr. Mudd going into Mrs. Surratt's house, Mr. Judson C. Jarboe was coming out; saw him shaking hands with a lady at the door as Mudd was going in; took the lady to be Miss Surratt from her likeness to her mother. Jarboe had murdered one of our citizens, and I wanted to know who lived at the house he was visiting.

Am a minister now, and have been for fifteen years. I hold a secret commission under the Government to arrest deserters and disloyalists wherever I find them; am a detective.

John H. Ward. Live in the suburbs of Bryantown, Maryland. On Saturday, 15th April, observed that the military were in town with Lieutenant Dana, and that there was great excitement among the people; a negro came up and said the President had been assassinated; also heard that the assassin's name was Booth. It was spoken of by everybody at Bryantown; first by the military, and then by the

citizens, and it was spread about that Booth was the assassin; heard this, I suppose, between 1 and 2 o'clock.

Think I saw Dr. Samuel Mudd there, but the excitement was so great cannot say positively that I did.

Cross-examined. Could not tell precisely the time I left Bryantown; suppose it was between 2 and 3 o'clock.

Boose was the name of the assassin, as spoken by the soldiers who were not familiar with language; they could not say Booth.

My house is four or five miles from Dr. Mudd's.

Frank Bloyce (colored). Was in Bryantown on Saturday evening after the murder of the President; saw Dr. Samuel Mudd there between 3 and 4 o'clock. I was in the store buying something when Dr. Mudd came in.

Eleanor Bloyce (colored). Know the prisoner, Dr. Mudd; saw him on 15th of April last, riding into Bryantown late in the afternoon. About eight or ten minutes after I saw him went into town myself; found the soldiers from Washington, and then I heard of the murder of the President; that he was shot on Friday night at the theater. I did not hear who shot him.

Becky Briscoe (colored). Live about a quarter of a mile from Bryantown; know Dr. Samuel Mudd. On Saturday, the day after the President was murdered about 3 o'clock, as I was standing in the kitchen door, saw the Doctor riding into town with a strange gentleman. The gentleman went toward the bridge, and

the doctor kept on to Bryantown, and this gentleman came back again. He kept on down the road to the swamp, when I saw him again. He stayed at the swamp till the Doctor came back, in about half an hour; went to town a very little while after the Doctor came back; there heard of the murder of the President; did not hear until two or three days after that the man who killed him was named Booth.

Marcus P. Norton. Was in this city, stopping at the National Hotel from 10th January to 10th March last; knew J. Wilkes Booth by sight, having seen him act several times at the theater.

A person hastily entered my room on the morning of 3rd March. He appeared somewhat excited, made an apology, and said that he had made a mistake; that he wanted to see Mr. Booth; told him that Booth's room was probably on the floor above, the number I did not know; left my writing and followed the person partly through the hall. As he went down stairs he turned and gave a look at me; his hasty apology and hasty departure made me follow him. On entering the courtroom this morning, I pointed out to Hon. Horatio King the three prisoners I had seen at the National Hotel—Dr. Mudd, Atzerodt and O'Laughlin.

Recognize the person, Samuel A. Mudd, as the man who entered my room on that occasion; am enabled to fix the date when he entered my room, first, by the fact of its being immediately before the inauguration, also that it was on the morning of the day on which I was preparing my

papers to argue a motion, pending before the Supreme Court. He had on a black coat.

To the Court. When Dr. Mudd entered my room he seemed somewhat excited, or perhaps in a hurry rather; said he had made a mistake in the room, and apologized in that way. The room I then occupied was No. 77; had ten days before been removed from room No. 120.

Louis J. Weichmann, p. 220.
Lieut. Alexander Lovett, p.

93.

Lieutenant D. D. Dana, p.

95.

William Williams, p. 95.

Simon Gavacan, p. 96.

Joshua Lloyd, p. 96.

Thomas L. Gardiner, p. 75.

Miss Anna E. Surratt, p. 238.

Miss Honora Fitzpatrick, pp. 230, 239.

THE DEFENSE.

John C. Thompson. Reside in Charles County, Maryland; had a slight acquaintance with a man named Booth; was introduced to him by Dr. Queen, my father-in-law, about the latter part of October last. None of the family, believe, had ever seen or heard of him before. He brought a letter of introduction to Dr. Queen from some one in Montreal, of the name of Martin; who stated that this man Booth wanted to see the county. Booth's object in visiting the county was to purchase lands he told me, and he made various inquiries of me respecting the price of land there; referred him to Henry Mudd, Dr. Mudd's father, a large landowner. He also inquired if there were any horses for sale in that neighborhood. Booth told me, on the evening of his arrival at Dr. Queen's, that he had made some speculations or was a shareholder in some oil lands in Pennsylvania; that he had made a good deal of money out of it.

Next morning, Sunday, I accompanied him and Dr. Queen to church at Bryantown; happened to see Dr. Samuel A. Mudd in front of the church before

entering, and introduced Mr. Booth to him. Mr. Booth stayed at Dr. Queen's that night and the next day. About the middle of the December following, Mr. Booth came down a second time to Dr. Queen's; never saw him but on these two occasions; do not know whither he went when he left Dr. Queen's.

Cross-examined. Do not know that Dr. Mudd owns lands, or whether he lives upon land that belongs to his father; know that his father is an extensive land holder, and I told Mr. Booth that perhaps he might be able to purchase land from him. Booth did not buy any lands in that neighborhood, to my knowledge.

Dr. William T. Bowman. Some time in December last I met J. Wilkes Booth at church, near Bryantown; was told it was Booth, the tragedian. A few days afterward I saw him again in Bryantown; he asked me if I knew any person who had any land to sell, and if I had any horses to sell. He then said, I will be down in a couple of weeks and look at your land.

Have heard Dr. Mudd say he would like to sell his land.

Cross-examined. Some four or five days after Booth was there, saw Dr. Mudd; told him I thought I should now sell my land. He asked me to whom I expected to sell; told him there was a man by the name of Booth, who said he was coming down to look at it, when he said, That fellow promised to buy mine.

Jeremiah Dyer. Lived from my childhood within half a mile of Dr. Samuel Mudd; know Sylvester Eglent, Frank Eglent, Dick Washington and Luke Washington; never heard any conversation in which Dr. Mudd said he would send Sylvester Eglent and his brother Frank Eglent to Richmond. Never heard Dr. Mudd say anything about sending off his hands to Richmond; never met Dr. Mudd in company with Walter Bowie at his father's house.

I know Andrew Gwynn very well. Since 1861 he has been in the rebel army. About 1st September, 1861, was in the neighborhood of Dr. Mudd's house for about a week. We were knocking about in the pines and around there; there was a panic in the neighborhood; the report was that everybody was to be arrested. A great many were arrested. Mr. Gwynn and his brother and myself received notice that we were to be arrested; met them there at Dr. Mudd's or my house. For several nights we slept in the pines between his house and mine. Our meals were brought us by Dr. Mudd. The Doctor used to bring down a basket containing bread, meat, biscuit and ham, and the colored girl, Mary

Simms, brought a pot of coffee.

Mr. Gwynn's horses were left at Dr. Mudd's, and were fed by the boys there; Milo Simms would be likely to attend to them.

Alvin Brook, William Mudd, Vincent Mudd and Albert Mudd might have come there while we were there, but I do not remember.

Have known Daniel J. Thomas since he was a boy; know his reputation for veracity in that neighborhood is such that very few men there have any confidence in him. His reputation is so bad that I would not believe him under oath.

Have known Dr. Mudd since he was a boy. I have never heard the slightest thing against him. He has always been regarded as a good citizen; he has a good reputation for peace, order and good citizenship; have always considered him a kind and humane master; never knew of anything to the contrary, except his shooting his servant, which he told me of the same day it happened.

Cross-examined. Was a member of a military organization in 1861, the object of which was, I believe to stand by the State of Maryland in the event of its taking ground against the Government of the United States.

The military company was organized in 1859, under the authority of Governor Hicks. On 22nd of February, 1860, we were up here in Washington, at the inauguration of the statue.

Our company broke up immediately on the breaking out of the war, and a great many left and joined the rebel army; think it was regarded by the Govern-

ment as a disloyal organization at the breaking out of the war.

Alvin J. Brook. Have been living at Calvert College, near Windsor since September last; before that I worked for Dr. Samuel Mudd; went there in January, 1864. While living at Dr. Mudd's never saw Captain or Lieutenant Perry, or Captain White, from Tennessee; know Mr. Benjamin Gwynn and Andrew Gwynn, but did not see either of them at Dr. Mudd's; know John H. Surratt; saw him in Prince George's County last August. While at Dr. Mudd's never saw nor have I any knowledge of those persons sleeping in the woods at Dr. Mudd's; never saw any evidence that they did; was in the stable morning, noon and night, but I never saw any strange horses there. While living at Dr. Mudd's, took my meals and slept in the house.

Know of persons sleeping in the woods in 1861, the first year of the war; know of Jerry Dyer and Benjamin Gwynn dodging about there in the woods; have not seen Andrew Gwynn since then.

Frank Washington (colored). Lived the whole of last year at Dr. Samuel Mudd's; was there every day, except Sundays and holidays, and in the kitchen of Dr. Mudd's house.

Know Mr. Andrew Gwynn and Mr. Benjamin Gwynn by sight; never saw any one camped out in the woods at Dr. Mudd's. I never saw any one there called Captain Perry or Lieutenant Perry, or Captain White and have never seen any strange horses in the stable; know Mary Simms. She was never known to tell the truth.

John H. Surratt I do not know; never saw him.

Cross-examined. Was not on the place when Dr. Mudd shot one of his servants.

(Witness was directed to look at the accused, Herold.)

I never saw him; do not know any of the prisoners, excepting Dr. Samuel Mudd. Was at home on Saturday, the day the President was killed, when two men called at Dr. Mudd's.

Baptist Washington (colored). Worked for Dr. Samuel Mudd last year. I never heard of anybody being camped about the spring, or sleeping in the woods at Dr. Mudd's last year; used to be down at the spring pretty often, but I did not see anybody there; do not know Captain Ben Gwynn or Andrew Gwynn, and never saw or heard of Captain White or Captain Perry being at Dr. Mudd's; nor did I ever know of any horses belonging to strangers being in the stable; was at the stable every day while I was at work, excepting Sundays and holidays.

Know Mary Simms, the colored girl at Dr. Mudd's. Nobody that knew her put much confidence in her.

Mary Jane Simms. Lived with Dr. Samuel Mudd during the year 1864; know Captain Bennett Gwynn and Mr. Andrew Gwynn. Mr. John H. Surratt have seen since; saw none of those persons at Dr. Mudd's last year; none of them were in the woods and fed from the house that I saw or heard of.

Bennett F. Gwynn. Andrew and George Gwynn are my brothers. Of Captain White from Tennessee, Captain Perry, or

Lieutenant Perry, I know nothing; never heard of such persons.

About the latter part of August, 1861, was with my brother, Andrew J. Gwynn, Mr. Jerry Dyer, and Alvin Brook, at Dr. Mudd's place. About that time General Sickles came over into Maryland, arresting almost everybody; was told I was to be arrested; went down into Charles County; stayed about among friends there for a week or so, as almost everybody else was doing. There was a good deal of running about that time.

We slept in the pines near the spring. We had some counterpanes which were furnished by Dr. Mudd, who brought our meals. We were there in the pines four or five days. While we were there we often went to Dr. Mudd's house almost every day, I think. Our horses, were, I suppose, attended to by Dr. Mudd's servant; have not been in Dr. Mudd's house or near his place since about 6th of November, 1861.

Cross-examined. The parties who were arrested in 1861 were mostly members of volunteer military companies, commissioned by Governor Hicks; was captain of a cavalry company. It was called the Home Guard, for the purpose of protection in the neighborhood.

William A. Mudd. Knew Dr. Samuel Mudd. I never saw any person by the name of Captain White or Perry about Dr. Mudd's premises; did not see Mr. Andrew Gwynn about his premises last year; never saw any person staying out in the woods at Dr. Samuel Mudd's, any time last year.

Charles Bloyce (colored). Know prisoner, Dr. Mudd. I was about his house Saturday nights, and some parts of Saturday and Sunday, all last year, except from 10th of April to 20th of May; did not see Ben or Andrew Gwynn at Dr. Mudd's when the war commenced, about four years ago; neither saw nor heard anything of Watt Bowie, John H. Surratt, Captain White of Tennessee, Captain Perry, Lieutenant Perry, or Booth at Dr. Mudd's while I was there; do not know of any rebel officers or soldiers being there; never saw anybody at his house dressed in any kind of uniform.

The colored folks there always laughed at Mary Simms; they said she told such lies they could not believe her. They said the same of Milo Simms; thought he was a liar, for he used to tell me lies sometimes; call Dr. Samuel Mudd a first-rate man to his servants; I never saw him whip any of them, nor heard of his whipping them; never heard a word of his sending or threatening to send any of his servants to Richmond.

John H. Downing. Am well acquainted with accused, Samuel A. Mudd, and also with Daniel J. Thomas.

Between 1st and 15th of March Daniel Thomas was at my house, and while there Dr. Mudd came in, and stayed about half an hour. Dr. Mudd did not, in conversation at that time, say that Abraham Lincoln was an abolitionist, and that the whole Cabinet were such, or that he thought the South would never be subjugated under abolition doctrines, or that the President and all the Cabinet and every Union

man in the State of Maryland would be killed in six or seven weeks. No such words were spoken in the house to my knowledge, and I stayed there all the time.

Dr. Mudd and Thomas could have had no conversation at that time but what I heard; do not recollect Dr. Mudd's saying to me on that occasion that he did not consider the oath of allegiance worth a chew of tobacco.

Cross-examined. Dr. Mudd and Thomas were talking all that half hour; their talk was pretty much about detectives; Dr. Mudd compared Thomas to a jack, because he said he was appointed a Deputy Provost Marshal under Colonel Miller; and said, I think, Daniel, I am much better educated than you are, and I do not think I am capable of filling that office myself, and I do not think you are. I was irritated when he called Thomas a jack, as it was in my house. If Mudd called Thomas an abolitionist as as well as a jack I did not hear it.

Dr. John C. Thomas. Am a practicing physician, and a brother of Daniel Thomas.

The Sunday morning after Dr. Mudd's arrest my brother was full of news of the arrest of Dr. Mudd, and the boot having been found with him, etc. He spoke of what Dr. Mudd had told him a few weeks before, in relation to the assassination of the President. Mr. Sullivan Wood and several other gentlemen were present. He had never mentioned the subject to me before that time. I am certain that in that same conversation he spoke of Booth's boot being found in Dr. Mudd's house.

Have attended my brother

professionally in some serious attacks. He had a very serious paralytic attack—partial paralysis of the face and part of the body. He labored under considerable nervous depression for some time before he recovered. He was mentally affected from it. His mind was not exactly right for a long time, and I am under the impression that it is not now at all times; and on these occasions he is credulous and very talkative. He is apt to tell everything he hears, and believe everything he hears.

His reason may be somewhat affected, and his memory also, when these attacks come on. He has fainting spells, and is confined to his bed; but when he is up, and in the enjoyment of good health, he seems to be rational.

James W. Richards. On the 1st June last met Daniel J. Thomas, in company with John R. Richardson, Benjamin J. Naylor, George Lynch, Lemuel Watson and William Watson, at the door-yard of Mr. Wm. Watson, near Horsehead. Mr. Thomas said that he had asked Mr. Wm. Watson and Mr. Benjamin J. Naylor for a certificate, stating that he was entitled to the reward, or a portion of the reward, that was offered for the arrest of Booth and his accomplices; and he thought if he could get a certificate from them to that effect, he would be entitled to a portion of the reward in the event of Dr. Mudd's being convicted, as he (Mudd) was considered one of Booth's accomplices. The reward, Mr. Thomas said, was \$10,000; he stated that the certificate was to certify that he informed them concerning Dr. Mudd's arrest.

He said if Dr. Mudd was convicted he was entitled to a portion of the reward.

Have known Daniel J. Thomas for the past five years; his reputation in the community for veracity is very bad.

Cross-examined. When I rode up, Mr. Lemuel Watson remarked to me, You are a justice of the peace; I am glad you have come; I want you to try a case here. Daniel says he is en-

titled to so much reward, and I want you to say what you think of it. Mr. Thomas stated that he had applied to Mr. Watson and Mr. Naylor for a certificate to the effect that he had informed them concerning Dr. Mudd's arrest, and that, if he could get such a certificate, he would be entitled to a portion of the reward. We told him that we thought he was entitled to \$20,000, by way of a joke.

Mr. Ewing offered the following in evidence:

War Department,
Washington, April 20, 1865.

One Hundred Thousand Dollars Reward.

The murderer of our late beloved President, Abraham Lincoln, is still at large. Fifty thousand dollars reward will be paid by this department for his apprehension, in addition to any rewards offered by municipal authorities or state executives. Twenty-five thousand dollars reward will be paid for the apprehension of G. A. Atzerodt, sometimes called "Port Tobacco," one of Booth's accomplices. Twenty-five thousand dollars reward will be paid for the apprehension of David E. Herold, another of Booth's accomplices. Liberal rewards will be paid for any information that shall conduce to the arrest of either of the above-named criminals or their accomplices. All persons harboring or screening the said persons, or either of them, or aiding or assisting their concealment or escape, will be treated as accomplices in the murder of the President and the attempted assassination of the Secretary of State, and shall be subject to trial before a military commission, and the punishment of death. Let the stain of innocent blood be removed from the land by the arrest and punishment of the murderers.

All good citizens are exhorted to aid public justice on this occasion. Every man should consider his own conscience charged with this solemn duty, and rest neither night nor day until it be accomplished.

Edwin M. Stanton,
Secretary of War.

William J. Watson. I was in my door yard, near Horsehead, on the 1st of June, with John R. Richardson, Benjamin Naylor, George Lynch, Lemuel Watson and Daniel J. Thomas. Daniel J. Thomas said that if

Dr. Mudd was convicted upon his testimony, he would then have given conclusive evidence that he gave information that led to the detection of the conspirators. Said he thought his portion of the reward ought to

be \$10,000, and he asked me if I would not, as the best loyal man in Prince George's County, give him a certificate of how much I thought he ought to be entitled to.

Cross-examined. Told him I did not think he was entitled to any portion of the reward, and would give him no certificate. Asked him if he believed he was entitled to the reward. He waived the question every time by saying that Daniel Hawkins said he was entitled to it. Thomas then asked Mr. Benjamin J. Naylor if he did not mention to him and to Arthur D. Gibson, before the killing of the President, the language that Dr. Mudd had used to him. Mr. Naylor said that he had never done it before or after.

Mr. James Richards, a magistrate, rode up, and my brother appealed to him, saying, There is a contest going on here between Billy and Daniel; you are a magistrate, and I want you to decide it between them. Mr. Richards said, Lem, let us say that he is entitled to \$20,000 of the reward. Mr. Thomas then said, No, sir; I would not have either of you gentlemen swear falsely, though by your doing so it would give me \$20,000. That is what I understood him to say.

Consider that David J. Thomas is entitled to belief on his oath. He has not as good a reputation for truth as most of the neighbors. In my neighborhood they say he tells a good many lies, but I think people tell him as many lies as he tells them. Though some speak well of him, people generally say that his reputation for truthfulness is bad.

John C. Holland. Am Pro-

vost Marshal of the draft for the Fifth Congressional District of Maryland. Know Daniel J. Thomas. Never received a letter from him in which the name of Dr. Mudd was mentioned; nor any letter stating that the President, or any member of his Cabinet, or any Union man in the State of Maryland would be killed.

Richard Edward Skinner (colored). I am the servant of Mrs. Thomas, the mother of Daniel J. Thomas. Know what is thought of him in the community for telling the truth, and he doesn't bear a good reputation among gentlemen. Have heard gentlemen say they would not believe him under oath.

John L. Turner. Have a slight acquaintance with Daniel J. Thomas. He is not regarded as a truthful man by any means in that neighborhood. From his general reputation, I could not believe him under oath, where he was much interested.

Dr. George D. Mudd has been considered a loyal man throughout the whole war. Have always been a loyal man and a supporter of the Government. I voted for George B. McClellan for President, because I considered him as good a loyal man and as good a Union man as Mr. Lincoln; and as he said that if he were elected the war would only last a few months, I voted for him on that ground.

Know Dr. Sam Mudd. His reputation for peace, order and good citizenship has been very good. Have always considered him a good, peaceable and quiet citizen. Never knew him to do anything in aid of the rebellion.

Polk Deakins, Jeremiah T.

Mudd, Lemuel L. Orme, John H. Baden, Eli J. Watson, Joshua S. Naylor, John Waters, Daniel W. Hawkins, Joseph Waters and Frank Ward testified to the bad reputation of Daniel J. Thomas for truth and veracity, and most of them gave evidence to the effect that both the prisoner and Dr. George Mudd were loyal citizens.

Jeremiah T. Mudd. Have known Dr. Mudd from early youth. His general character for peace, order and good citizenship in the neighborhood in which he resides is exemplary; he has always been amiable and estimable, a good neighbor, honest and correct.

Remember Booth being in the county; I saw him at church at Bryantown in the latter part of November or early December last. Noticed a stranger there, and inquired who he was, and was told that his name was Booth, a great tragedian.

Cross-examined. Really do not know Dr. Mudd's reputation for loyalty to the Government of the United States during this war. Have myself heard him say that he did not desire to see two Governments here. I have never known of any disloyal act of his, and never heard of any. Never, that I am aware of, heard any disloyal sentiments expressed by him. Have heard him express sentiments opposed to the policy of the Administration. Did hear of his shooting one of his servants; heard it was only a flesh wound. Heard that the servant who was shot was obstreperous; that he had been ordered to do something which he refused to do, and started to go away; that the Doctor had his

shot-gun with him, and he thought he would shoot him to frighten him, and make him stop and come back.

J. H. Montgomery. Dr. Samuel A. Mudd on the 22d of last December asked me if I could bring a stove from Washington for him. Told him that Lucas, who hucksters for me and drives my wagon, could bring it down.

Francis Lucas. Am a huckster and live about two miles from Bryantown, Maryland. On Christmas eve last Dr. Mudd came to me in market and asked me to take a stove down for him; I promised to do so if I could.

Samuel McAllister. Have been a clerk at the Pennsylvania House in this city since 2d December. That is the register of the Pennsylvania House; the name of Dr. Samuel A. Mudd does not appear on it for the month of January. Find the name Samuel A. Mudd entered under date of December 23, 1864, and also J. T. Mudd; they both occupied the same room.

Cross-examined. Do not know who slept with Atzerodt at the Pennsylvania House on the night of the President's assassination; was in bed that night. The next morning I saw the name of Samuel Thomas entered on the book; further than that I do not know.

Julia Ann Bloyce (colored). Went to live at Dr. Sam Mudd's on the day they call Twelfth Day after Christmas before last, and left two days before this last Christmas. Used to cook and wash and iron, clean up the house and sometimes wait on the table. Never saw Andrew Gwynn nor any Confederate officers or soldiers about Dr. Mudd's house and never saw a man called Sur-

ratt there, nor heard the name mentioned.

Have never seen John H. Surratt at Dr. Mudd's. Have seen Ben. Gwynn, but I did not see him at Dr. Mudd's last year. Did not hear his name nor Andrew Gwynn's mentioned.

Dr. Mudd was very kind to us all. Lived with him a year, and he treated me very kindly. Did not hear of his whipping Mary Simms; he never struck her nor any of the others the whole year. The general opinion of Mary Simms among the colored people is that she is not a very great truth-teller.

Never heard Dr. Mudd say anything against the Government or Mr. Lincoln.

Fannie Mudd. Dr. Mudd, the accused, is my brother. Know of my brother's whereabouts from the 1st to 4th of March last. On the 1st of March my sister was taken sick, and on the morning of the 2d my father sent to her room early to know how she felt. My father immediately dressed and went for my brother and he came there with my father and took breakfast with us. On the 3d my brother came in between 11 and 12 to see my sister, and took dinner with us. On the 4th he came to dinner again, and on the 5th, Sunday, he was at my father's in the evening, in company with Dr. Blanford, my brother-in-law.

Did not see my brother on the 1st of March, but I am pretty sure he was at home. Am confident my brother was not absent from home at any time between the 1st and 5th of March.

Was in the habit of visiting

my brother's house very frequently last summer and the summer previous. Never saw or heard of John H. Surratt being there. I heard of Booth being there once, in November; but did not see him.

I knew of three gentlemen, Mr. Jerry Dyer, Andrew Gwynn and Bennett Gwynn, sleeping in the pines near my brother's house in 1861; do not think they secreted themselves except during the night. Never heard of a Captain Perry, or Lieutenant Perry, or of any Confederate soldiers being about my brother's house. My father's house is about thirty-two miles from Washington.

Cross-examined. Heard of Booth being at my brother's in the early part of last November. Do not know personally that my brother was at home on the 1st of March; did not see him at all on that day. Did not meet Booth when he was at Bryantown, but I saw him in church; he sat in Dr. Queen's pew with his family.

Mrs. Emily Mudd. Live at the house of Mr. Henry L. Mudd, father of the prisoner. On Thursday, 2d of March, Dr. Samuel Mudd was summoned very early in the morning to see his sister, who was sick, and again on the next day, the 3d. He came over about 12 o'clock that day and dined with us, and finding his sister worse, came over again in the evening and brought her some medicine. He was there again on Saturday to see her, and took dinner again; think he was there on Saturday afternoon. Am sure that Dr. Samuel Mudd was not from home at any time between the 1st and the 5th of March; he was attend-

ing his sick sister, and was not absent from home at all.

Know Andrew Gwynn, but have not seen him since the fall of 1860. He was in the habit of visiting the house of Dr. Mudd's father before that, but has not, to my knowledge, been there, or at the house of Dr. Samuel A. Mudd, since 1861. Never knew John H. Surratt, or Lieutenant Perry, or Captain Perry, and never heard of their being at the house of Samuel A. Mudd; nor have I ever known or heard of parties of Confederate officers or soldiers being about Dr. Samuel Mudd's house.

Betty Washington (colored). Went to live at Dr. Samuel A. Mudd's house the week after Christmas, and was there in March last. Know that on 1st of March Dr. Mudd was down at the tobacco bed, getting it ready to sow. He was out all that afternoon, but was at home at night. Saw him the next morning, Thursday, at breakfast time, and we cut brush all that day, and he was there working with us all day; he laid the brush off for us to dig up. On Friday he was stripping tobacco in the bar. Saw him on Saturday at breakfast, and after dinner he went to the post-office at Beantown and came back at night. On Sunday he went to church, and came home Sunday night.

Never heard of John H. Surratt while I lived at Dr. Mudd's. Know Mary Simms, who used to live at Dr. Mudd's; all the colored folks about there gave her a bad name as a story-teller.

Frank Washington (colored). Twelve months since went to live

at Dr. Mudd's house. Was there last March, on the 1st, Ash Wednesday; he was out working with me on the tobacco bed from morning until night; the next day he was about the tobacco bed in the morning and afternoon. On Friday he went to the bed again, but it commenced raining. He then went to the barn to strip tobacco, and he stayed in the barn until 12 o'clock, when he went to his father's. On Saturday he kept the house all day until pretty late in the evening, when he rode up to the post-office at Beantown. On Sunday he went to church.

On Ash Wednesday night, and every other night, Dr. Mudd was at home; Dr. Mudd was also at home Tuesday, last day of February, and I saw him on Sunday night, the 5th; he was at home.

John F. Davis. Know that Dr. Samuel Mudd was at home on 3d March, for I went down to see him, and carried him half a dozen small perch. Saw him at his house.

Thomas Davis. Since 9th January I have been living at Dr. Samuel Mudd's. Recollect he was at home on 1st March, because I was sick and he came into my room to see me. On 2d of March he came to see me twice, morning and evening. On 3d saw him three times, and on 4th and 5th he came to see me as usual, in the forenoon and afternoon of each day.

Henry L. Mudd, Jr. My brother, Samuel A. Mudd, on 1st March was certainly at home. On 2d of March he was at my father's house before breakfast, having come to see my sister,

who was sick. Saw him again that day at 4. On 3d he was sent for about 10 o'clock, and the boy found him in the barn stripping tobacco. He came about half-past 11, remained to dinner, and left about 2. On 4th March he was again at my father's house to see my sister. On 5th March I saw him at church, and he dined at our house.

My brother has not owned a carriage of any description since I have known him.

Cross-examined. Distinctly remember my brother being at my father's house on the 3d March.

Dr. J. H. Blanford. Saw Dr. Mudd at his house on 1st March, and saw him at church on 5th. Dr. Mudd's father does not own a buggy or rockaway. His carriage is a large, close family carriage; four seats inside and two outside.

Miss Mary Mudd. On Ash Wednesday, 1st of March, was making preparations to go to church, when I was taken sick. On 2d March my father sent for Dr. Samuel Mudd, my brother, and brought him over. He remained with us till 7 o'clock and then returned to his own house. On Friday morning, 3d March, he came between 11 and 12 o'clock and dined with us. He left at 2 o'clock, and returned at 4, bringing with him some medicine. On the 4th, Saturday, my brother came to see me and dined with us. On 5th, Sunday, he was at our house in the evening. On Monday, 6th, he came to see me again; also on Tuesday, 7th.

I know of my brother going to Washington on 23d of March, in company with Lewellyn Gardiner.

My brother never owned a buggy or carriage. My brother has for the past year worn a drab slouch hat. Have never seen him wear a black hat for a year.

Never knew or heard of any Confederate officers, or soldiers, or citizen Confederates, stopping at my brother's house. Saw Booth in Dr. Queen's pew at church last fall or winter.

Thomas L. Gardiner. On 23d March Dr. Mudd (the accused) and myself came to Washington together. We left home about 8 in the morning, and came up to attend the sale of Government condemned horses.

We were not separated at all during the whole day; we were not out of one another's sight. Saw nothing of Booth while there, nor did we go to the National Hotel.

Dr. Charles Allen. Am acquainted with the prisoner, Mudd. Saw him at my office in this city on the evening of 23d March. He came there in company with Mr. H. A. Clark and Mr. Gardiner about 8 o'clock and remained till between 12 and 1 o'clock at night.

Henry A. Clark. In the latter part of last March Dr. Mudd and Mr. Gardiner came to my store in this city between 6 and 7 o'clock in the evening, and went home with me and took tea at my house. After tea we went around to Dr. Allen's office and spent the evening there. Remained till between 12 and 1 o'clock, playing cards.

Do not know either J. Wilkes Booth, John H. Surratt or Mr. Weichmann. No one bearing either of those names was in company with Dr. Mudd, Mr.

Gardiner and myself at Dr. Allen's, at my house, or anywhere else. Dr. Mudd was not out of my sight from the time he came into the store until he went into his room to bed.

Henry L. Mudd, Jr. On 10th of last April my brother, Samuel A. Mudd, and myself went to Blanford's, ten miles from Washington. We stayed there all night, and the next morning Dr. Blanford, and myself went to Giesboro to buy condemned Government horses. Know of but two other visits to Washington made by my brother, Samuel A. Mudd, during last winter and spring; the first on 23d or 24th of December, in company with Jerry Mudd, and the second visit with Thomas L. Gardiner, about 23d March. With the exception of those visits to Washington, and when he went to Giesboro with me, my brother has been at home, and I saw him nearly every day, at least four times a week, at home and at church.

Do not know of any Confederate soldiers or other persons having been about my brother's house since my return from college, nor did I ever see or hear of John H. Surratt being there.

Robert F. Martin. Dr. Mudd was at my house on 23d March last with Mr. Llewellyn Gardiner; they took dinner, and left their horses, then went over the river, returned next day to dinner and got their horses. He was at my house again in April, in company with his brother, Henry Mudd.

Dr. Blanford joined them, perhaps between 3 and 4 o'clock, I am not positive, and they all three left together. They said

they were going to Giesboro Point to buy horses. Have no means of fixing the date of this visit except from my book, which is at home; think it was the 4th of April.

Have referred to my register and find that it was Jerry Mudd that was at my house on 4th April. It must have been on 11th April that Dr. Samuel Mudd, his brother Henry and Dr. Blanford were there.

Saw Dr. Mudd and Jerry Mudd in market in Washington on 24th December.

Dr. Mudd was at my house on 23d March; his name was registered on that day. He and Mr. Gardiner came together before dinner. They left their horses and took them away the next day after dinner. Do not know where they went; they went across the river.

My hotel is about one hundred yards from the Navy Yard bridge, Eastern Branch bridge, and persons going from Bryantown to Washington pass by it. Have a post-office there. Have not seen Dr. Mudd at my house, on his way to or from Washington, since the 24th of December, except on those two occasions. Do not recollect his stopping there on December 24th, but saw him in market.

Dr. J. H. Blanford. On 11th April last accompanied Dr. Samuel A. Mudd and his brother Henry L. Mudd, to Giesboro to attend a Government sale of horses. Arrived there some time before the hour of sale, and remained with Dr. Mudd till after 12 o'clock, examining horses. Went to Washington and got back about half-past 2 and found Dr. Mudd there waiting for me.

Thomas Davis. Have lived at Dr. Samuel Mudd's since 9th January last, working on his farm, with the exception of one night some time in January. Dr. Mudd has been absent from home only three nights during that time; one night at a party at George Henry Gardiner's, and the other times in Washington. On 26th January he went to Mr. Gardiner's; on 23d March, when he went to Washington with Mr. Lewellyn Gardiner to buy some horses. They came back on the 24th.

Do not know John H. Surratt nor John Wilkes Booth; never heard their names mentioned, nor the name of David E. Herold.

(Likeness of John Wilkes Booth shown to the witness.)

Never saw that man at Dr. Mudd's while I was living there.

Betty Washington (colored). Went to live at Dr. Samuel Mudd's on Monday after Christmas, and have been living there ever since. Have not been away from Dr. Mudd's house a single night since I went to live there. Dr. Mudd has not been away from home at night but three times that I can recollect.

The first time, he and his wife went to a party at Mr. George Henry Gardiner's; they went about sundown, and came back late at night. The next time was when he went to Giesboro with his brother, Mr. Henry Mudd, to buy some horses. He started in the morning and came back next day. The last time he went to Washington he started in the morning and came back the next day at night. Did not see any one leave the house with him, but I heard that Mr. Gardiner went

to Washington with him. He was away, in all, two whole nights.

Did not see the two men that were at Dr. Mudd's lately—Booth and Herold; saw one of them, the small one. I was standing at the kitchen window, and just saw a glimpse of him going in the direction of the swamp. Did not see any one with him.

Cross-examined. Do not know where Giesboro is. All that I know about Dr. Mudd's going there is, that he told me he went there, and so did his wife.

George Booz (colored). Live with Mr. Henry L. Mudd. Am attending to his lower place next to Bryantown, above the road, about half a mile from Mr. John McPherson's.

Saturday, 15th April, saw Dr. Mudd at my house. Also saw him on the road coming up from Bryantown and going toward home. Did not see any person with him, either walking or riding. That was between 3 and 4 o'clock in the afternoon.

Susan Stewart. Live about a mile from Bryantown and a quarter of a mile from George Booz's.

Saw Dr. Samuel Mudd, the prisoner, on Easter Saturday, about 3 or 4. Saw no one with him. Saw George Booz meet Dr. Mudd that day after he had passed our house.

Primus Johnson (colored). I saw Dr. Samuel Mudd coming from Bryantown by Mr. Booz's on the Saturday after the President was killed, about 3 o'clock. Also saw him when he was going to Bryantown; he was riding by himself. There was a man followed Master Samuel, going toward Bryantown; this man came

back by himself, and he came back before Dr. Samuel Mudd, about half an hour.

Leonard S. Roby. Was in Bryantown on the Saturday after the assassination of the President, about 3 o'clock in the afternoon, and stayed there until night. Before getting to Bryantown met a gentleman on the road, who told me of the assassination, but he professed not to believe it. When I got near Bryantown found soldiers stationed two or three hundred yards from the village. I made inquiries of them, and learned that such was the fact.

It was not till a few minutes before I left in the evening that I received the information as to who was the assassin, from Dr. George Mudd.

Know Daniel J. Thomas, and the reputation he bears for truth and veracity in the neighborhood in which he lives. It is such that I would not believe him under oath.

E. D. R. Bean. Am a merchant at Bryantown. On the day following the assassination Dr. Samuel Mudd bought some goods at my store. Sold him some calicoes; this is the only thing that I particularly remember.

Cross-examined. I can not state positively when I first heard that it was Booth who had assassinated the President. Heard that he had been traced within three miles and a half of Bryantown, but I can not say when I first heard it; did not hear it on Saturday. I think it was Dr. George Mudd that told me on Saturday night that Booth was the murderer.

John Acton. Live about three

miles from Bryantown, and about a mile and a quarter from Dr. Samuel Mudd's on the road from his house to Bryantown. On the day after the President was killed saw Dr. Mudd riding toward Bryantown on a gray horse. He was alone when I first saw him, but there was a man overtaking him. In about three-quarters of an hour saw the man come back.

Cross-examined. When I first saw Dr. Mudd and the man they were a little way apart, and the next thing I saw the man get up to him. Heard no conversation between them. I did not know the man, nor did I notice him much; noticed the horse more; he rode a bay horse. Can not swear that that man (pointing to the accused, David E. Herold) is the one; he looks more like him than any of the other prisoners, but I can not say that he is the man.

Mason L. McPherson. Live within three-fourths of a mile of Bryantown. About 2 o'clock on the day after the assassination of the President went to Bryantown, and was there till 7 or 8 o'clock in the evening. I did not hear any one say that afternoon who had assassinated the President. Heard that Boyle had murdered the Secretary of State—John Boyle, the guerilla, that had passed through there several times, and had killed Captain Watkins. Made inquiries of some of the soldiers, but they could not tell me who had killed the President. I asked right smart of people, citizens as well as soldiers, but they did not know. On Sunday I heard who the supposed murderer was.

John McPherson. Was at

Bryantown on Saturday, the day after the assassination of the President, from 2 till about 6, and heard the talk about the assassination. Did not hear who was the assassin. On Monday morning first heard that it was Booth.

Peter Trotter. I am a blacksmith, and live in Bryantown. Was there on Saturday, the day after the President was killed. Heard the subject of his murder talked of a good deal. I inquired of some soldiers if they knew who killed the President, and they said they did not know.

John I. Langley. Was at Bryantown two or three times on Saturday, 15th of April; it was sundown when I last left; heard that the President was assassinated, but did not hear who assassinated him; did not hear that till Monday morning.

Marcellus Gardiner. Was at Reves' church in our neighborhood on Easter Sunday, 16th of April, following the murder of the President. The assassination was known and generally talked of, but the name of the assassin was not known; saw Dr. Samuel Mudd there at church.

Dr. George D. Mudd. Am a practitioner of medicine in the village of Bryantown, Md. Dr. Samuel A. Mudd was a student of medicine under me for many years. His father and my father were first-cousins; know his reputation in that neighborhood for peace, order and good citizenship, and I know of none whose reputation is better. As a master, I have always considered him a humane man to his servants, as well as to others.

Was at Bryantown, Saturday, 15th, when the news of the as-

sassination of the President reached there, and remained there all the evening. Lieutenant Dana, on whom I called for information, told me that the party who had attempted the assassination of Secretary Seward was named Boyle, and claimed him to be the same party who assassinated Captain Watkins of Ann Arundel County, and that the party who assassinated the President was supposed to be a man by the name of Booth, but that he thought he had not yet got out of Washington.

Was at church on Sunday, 16th; it was then known that the President had been assassinated, but no one, to my knowledge, supposed that Booth had crossed the river; did not make much inquiry relative to it; saw Dr. Samuel Mudd at church. On returning home he overtook me, and I rode with him as far as his house.

I told the military authorities in Bryantown of the suspicious persons having been at the house of Dr. Samuel A. Mudd on Saturday. I stated that Dr. Samuel A. Mudd had informed me that two suspicious parties came to his house a little before day-break on Saturday morning; and that one of them had, as he said, a broken leg, which Dr. Samuel Mudd bandaged; that they were laboring under some degree of excitement—more so, he thought, than should arise from a broken leg; that these parties stated that they came from Bryantown, and were inquiring the way to the Rev. Dr. Wilmer's; that while there one of them called for a razor and shaved himself, thereby altering his appearance; that he improvised a crutch or

crutches for the broken-legged man, and that they went in the direction of Parson Wilmer's; also told the officer that Dr. Samuel Mudd went from his house with the younger of the two men to try and procure a carriage to take them away from his house; that he went down the road toward Bryantown and failed to get one, and that they left his house on horseback; told him that one bone of the man's leg was broken, said by him, to have been by a fall from his horse. All this information I received from Dr. Samuel A. Mudd.

When I was leaving Dr. Samuel Mudd, told him I would mention the matter to the military authorities at Bryantown, to see what could be made of it. He told me he would be glad if I would; but that if I could make the arrangements, he would much prefer that he be sent for, and that he would give every information in his power relative to it; that, if it became a matter of publicity, he feared for his life, on account of guerrillas that might be infesting the neighborhood.

I was sent for to my house, I think, on Tuesday afternoon. There were four detectives, who asked me to go up in a room with them. They questioned me very particularly relative to this affair. I stated to them what I already stated here; and upon my inability to answer all their questions, they ordered their carriage and asked me to direct them the way to Dr. Samuel Mudd's house; accordingly went with them to Dr. Samuel Mudd's house. Dr. Samuel Mudd was not in the house; was outside of the door, and saw him coming,

and told him, as he entered the house, that the detectives had come there for the purpose of ascertaining the particulars relative to that matter which he had spoken to me about, and that I had made the statement to the military authorities which he had made to me on Sunday, and that they were up there for the purpose of making special inquiry in reference to it; had already stated to the detectives that I felt confident the Doctor would state the matter just as I had stated it to them, and would not and did not stay in there during their examination.

The officers that went with me were Lieutenant Lovett, John Lloyd, Gavacan, an Irishman, and Williams.

After their conversation with Dr. Samuel Mudd, just before they got into their conveyance, they asked me if I could direct them the way to Parson Wilmer's. It was then nearly night; told them I certainly would, and turning to Dr. Samuel Mudd, who was standing outside the door, I asked him what was the best road to Parson Wilmer's, which he told me, and also stated that there was a bad bridge on that way.

Before we got to the main road leading to Bryantown, these officers concluded, in consequence, it seems, of my stating to them that it was very little out of the way, to go back by Bryantown to Parson Wilmer's—to go that way, being a much better road, I thought. Nothing was said by either of those officers about Dr. Samuel Mudd having denied that the two men had been at his house.

I had very little conversation

with Dr. Mudd at church. He remarked that he regarded the assassination of the President, to use his own expression, as a most damnable act. He overtook me on the road after church, and stated to me that two suspicious persons had been at his house; that they came there on Saturday morning a little while before daybreak; that one of them had a broken leg, or a broken bone in the leg, which he bandaged; that they got while there something to eat; that they seemed laboring under some degree, or probably quite a degree, of excitement—more excitement than probably should necessarily result from the injury received; that they said they came from Bryantown, and were inquiring the way to Parson Wilmer's; that while there one of them called for a razor, and shaved himself; that he himself, in company with the younger one, or the smaller one of the two, went down the road toward Bryantown, in search of a vehicle to take them away from his house; that he arranged or had fixed for them a crutch or crutches for the broken-legged man; and that they went away from his house, on horseback, in the direction of Parson Wilmer's.

Benjamin Gardiner. Saw Dr. Samuel Mudd at church on the Sunday after the assassination; had heard on Saturday evening of the assassination, but did not believe it; on Sunday morning, I saw the people collected together in the church-yard in earnest conversation about the assassination; spoke to prisoner; asked him if it was a fact that the President had been assassinated. He then turned around to

me from the crowd and said, Yes, such seems to be the fact; and he added, Sir, we ought to immediately raise a home guard, and to hunt up all suspicious persons passing through our section of country and arrest them, and deliver them up to the proper authorities; for there were two suspicious persons at my house yesterday morning.

Whether Dr. Mudd said anything further about the assassination or not, cannot tell. Everybody was talking about it until church commenced.

Daniel E. Monroe. On Sunday, 16th of April, heard at Bryantown, from Mr. William Henry Moore, that the man who had assassinated the President was Edwin Booth. It was about 10 o'clock in the morning that I heard this. Mr. Philip A. Lasser and Mr. Warren were present when Mr. Moore told me; he said he heard it from the soldiers; some time afterwards I heard the assassins had been traced near Bryantown.

John F. Davis. Was at Dr. Samuel Mudd's house the Tuesday following the assassination of President; went into the field and informed him that Lieutenant Lovett and a party of soldiers were at his house, and had come to see him. When I came up to the house, met Dr. George Mudd. Dr. Samuel Mudd did not betray the least unwillingness to go to the house to see the officer, or manifest any alarm.

John F. Hardy. I was with Dr. Samuel Mudd on Friday, a week after the assassination of the President; we dined together at his father's. While there a messenger came for Dr. Samuel Mudd to go to his house; went

with him, and met there Lieutenant Lovett in Dr. Mudd's yard. Dr. Mudd told the Lieutenant that there was a boot there, and asked him if he wanted it. Lieutenant Lovett said he did. No inquiry had been addressed to him about the boot, or anything said in my hearing about it before that. Dr. Mudd's wife said that she had found the boot under the bed, in dusting up the room a day or two after the men left.

There was no word said about searching the house before Dr. Mudd spoke of the boot.

Mrs. Mary E. Nelson. David E. Herold, one of the accused, is my brother; never heard him speak of Dr. Samuel A. Mudd, and never heard the name mentioned in the family until his arrest.

Rev. Charles H. Stonestreet. In the year 1850 was the President of Frederick College, in Frederick City, Maryland, and the accused, Samuel A. Mudd, was a pupil there.

L. A. Gobright. Am telegraphic correspondent of the Associated Press; was at Ford's theater on the night of the 14th of April, after the assassination of the President, and heard some persons say positively that it was J. Wilkes Booth who was the assassin; others said they knew J. Wilkes Booth, and that the man who jumped upon the stage and made his exit differed in appearance from Booth; there did not seem to be any certainty at that time, and I was not thoroughly satisfied in my own mind that night as to who was the assassin.

Cross-examined. Was not per-

fectly satisfied that night that it was J. Wilkes Booth who had killed the President. It was telegraphed over the country that he was the assassin, but not by me. After I saw the official bulletin the next morning, came to the conclusion that J. Wilkes Booth was the man.

James Judson Jarboe. Live in Prince George's County. Do not know and never saw Dr. Samuel Mudd before his arrest; saw Mrs. Surratt some time in April, since her arrest; had not seen her before that for two or three years; have never been at her house on H Street, nor have I ever met her daughter at any house in Washington.

Have known Mr. Evans for several years; he used to live in my neighborhood and attend a Methodist Church there; was standing at the corner of Ninth and G Streets, when Mr. Evans passed by me, walking; had not seen him before, I think, for a year or two.

Cross-examined. Know John H. Surratt. I met him on Seventh street, in this city some time in March last at the restaurant nearly opposite Odd Fellows Hall. There were several gentlemen with Surratt; just spoke to him, passed the time of day, and passed on; do not know the persons who were with him; do not know John Wilkes Booth; have seen David E. Herold; recognize him among the prisoners; was not with Surratt when I saw him at the restaurant; have not, to my knowledge, met Surratt since; was arrested on 15th April. I do not know that I have been charged with any disloyal conduct down in

Maryland, nor do I know for what I was arrested.

Henry Burden. Know Marcus P. Norton, who testified here today. His general reputation for veracity in Troy, New York, is very bad, and would not believe him under oath.

D. W. Middleton. Am clerk of the Supreme Court of the United States. Mr. Marcus P. Norton argued a motion in the Supreme Court in the case of Willis Hamiston v. John Stain-

throp, et al., on the 3d of March, 1864.

Judge A. B. Olin. Resided in the city of Troy, New York, about twenty years prior to my coming to this city, two years ago; knew Marcus P. Norton, a lawyer of that city. Judging by what people say of him for veracity, should say his reputation was bad, and where his interests, or passions, or prejudices were enlisted, would not rely upon his testimony under oath.

IN REBUTTAL.

John F. Hardy. Live about three miles from Dr. Mudd, the prisoner. On Saturday evening, the day after the assassination, just before sundown, saw Dr. Mudd a few hundred yards of my house. He said that there was terrible news; that the President and Mr. Seward and his son had been assassinated the evening before. Something was said in that connection about Boyle (the man who is said to have killed Captain Watkins) assassinating Mr. Seward; remember that Booth's name was mentioned in the same connection, and I asked him if it was the man who had been down there, and was represented as Booth. His reply was that he did not know whether it was that man or some of his brothers; he understood that he had some brothers. That ended the conversation, except that he said it was one of the most terrible calamities that could have befallen the country at this time.

He said nothing to me in that conversation about two strangers having called at his house, and remaining there all day.

When I asked if it was Booth that had been down there, I referred to the stranger that I had seen at church some time before last Christmas, perhaps in November, whose name I was told was Booth.

Cross-examined. Do not think I asked Dr. Mudd what was the news; he told me there was bad news in the country. He said that he had been to Bryantown and got the news there. I had not heard a word of it before. Dr. Mudd seemed to be in earnest when he spoke of this being a terrible calamity.

Francis R. Farrell. Live near Bryantown; am very well acquainted with Dr. Samuel A. Mudd. He came to my house on Easter Saturday evening the day following the assassination of the President between 4 and 5 o'clock. My house is about midway between Dr. Mudd's and Bryantown; he came from the road leading to Bryantown.

Mr. Hardy and myself were in the house when Dr. Mudd came there, and Mr. Hardy went out and had some talk with the Doctor. Directly after he went out,

he called out to me that the President was assassinated, and also Seward and his son, I think. Then I called out to where Dr. Mudd and Mr. Hardy were, and asked if it was so; understood the Doctor to say it was.

I asked the question who assassinated the President, and the Doctor replied and said, A man by the name of Booth. Mr. Hardy then asked him if it was the Booth who was down there last fall. The Doctor said that he did not know whether it was or not; that there were three or four men of the name of Booth, and he did not know whether it was that one or not; he said that if it was that one, he knew him. That was all he said about it, excepting that he said he was very sorry that this thing had occurred—very sorry.

He did not give any particulars of the assassination, and made no illusion to two men having been at his house that morning and during the day.

Cross-examined. Dr. Mudd said he thought at this time that the killing of the President was

the worst thing that could have happened. That was the only reason he gave why he was sorry according to my recollection. He said it would make it a great deal worse for the country. From his appearance, think he was entirely in earnest in expressing his sorrow for the crime.

Jacob Shavor. Since the summer of 1858, have known Marcus P. Norton quite intimately. We have both lived in Troy. He has been employed by the firm of Charles Eddy & Co., of which I am a member for six years, as patent lawyer. I know that his reputation, as a man of integrity and truth, is good there; and from my knowledge of his reputation, his conduct, and character, would fully believe him under oath. In the early part of 1863, an attempt was made to impeach Mr. Norton's credibility as a witness, but it was unsuccessful, and it was so regarded by the public and myself.

William Hamiston, Horatio King, William Wheeler and Silas H. Hodges also testified to the good reputation of Mr. Norton for truth and veracity.

MR. EWING FOR THE DEFENSE.

Mr. Ewing. May it please the Court: If it be determined to take jurisdiction here, it then becomes a question vitally important to some of these parties—a question of life and death—whether you will punish only offenses created and declared by law, or whether you will make and declare the past acts of the accused to be crimes, which acts the law never heretofore declared criminal; attach to them the penalty of death, or such penalty as may seem meet to you; adapt the evidence to the crime and the crime to the evidence and thus convict and punish. This, I greatly fear may be the purpose, especially

since the Judge Advocate said, in reply to my inquiries that he would expect to convict "under the common law of war." This is a term unknown to our language—a quiddity—wholly undefined and incapable of definition. It is, in short, just what the Judge Advocate chooses to make of it. It may create a fictitious crime, and attach to it arbitrary and extreme punishment, and who shall gainsay it? The laws of war—namely, our Articles of War—and the habitual practice and mode of proceeding under them, are familiar to us all; but I know nothing, and never heard or read of a common law of war, as a code or system under which military courts or commissions in this country can take and exercise jurisdiction not given them by express legal enactment or constitutional grant. But I still hope the law is to govern, and if it do, I feel that my clients are still safe.

I will now proceed to show you, that on the part of one of my clients—Dr. Mudd—no crime known to the law, and for which it is pretended to prosecute, can possibly have been committed. Though not distinctly informed as to the offense for which the Judge Advocate claims conviction, I am safe in saying, that the testimony does not point to treason, and if he is being tried for treason, the proceedings for that crime are widely departed from. The prosecution appears to have been instituted and conducted under the proclamation of the Secretary of War, of April 20, 1865. This makes it a crime, punishable with death, to harbor or screen Booth, Atzerodt, or Herold, or to aid or assist them to escape. It makes it a crime to do a particular act, and punishes that crime with death. I suppose we must take this proclamation as law. Perhaps it is part of what the Judge Advocate means when he speaks of the "common law of war." If this be so, my clients are still safe, if we be allowed to construe it as laws are construed by courts of justice. But I will show, first, that Dr. Mudd is not, and cannot possibly be, guilty of any offense known to the law.

1. Not of treason. The overt act attempted to be alleged is the murder of the President. The proof is conclusive, that

at the time the tragedy was enacted Dr. Mudd was at his residence in the country, thirty miles from the place of the crime. Those who committed it are shown to have acted for themselves, not as the instruments of Dr. Mudd. He, therefore, cannot be charged, according to law and upon the evidence, with the commission of this overt act. There are not two witnesses to prove that he did commit it, but abundant evidence to show negatively that he did not.

Chief Justice Marshall, in delivering an opinion of the Court in Burr's case, says:

"Those only who perform a part, and who are leagued in the conspiracy, are declared to be traitors. To complete the definition both circumstances must concur. They must 'perform a part' which will furnish the overt act, and they must be leagued with the conspiracy." 4 Cr., 474.

Now, as to Dr. Mudd, there is no particle of evidence tending to show that he was ever leagued with traitors in their treason; that he had ever, by himself, or by adhering to, and in connection with, others, levied war against the United States. It is contended that he joined in compassing the death of the president ("the king's death"). Foster, p. 149, speaking of the treason of compassing the king's death, says:

"From what has been said it followeth, that in every indictment for this species of treason, and indeed for levying war and adhering to the king's enemies, an overt act must be alleged and proved."

The only overt act laid in these charges against Mudd is the act of assassination, at which it is claimed he was constructively present and participating. His presence, and participation, or procurement, must be proved by two witnesses, if the charge be treason; and such presence, participation, or procurement, be the overt act.

Chief Justice Marshall, in Burr's case (Dall., 500) says:

"Collateral points, say the books, may be proved according to the course of the common law; but is this a collateral point? Is the fact without which the accused does not participate in the guilt of the assemblage, if they were guilty (or in any way in the guilty act of others), a collateral point? This cannot be. The presence of the party, when presence is necessary, being part of the overt act, must

be positively proved by two witnesses. No presumptive evidence, no facts from which presence may be conjectured or inferred, will satisfy the Constitution and the law. If procurement take the place of presence, and become part of the overt act, then no presumptive evidence, no facts from which the procurement may be conjectured or inferred can satisfy the Constitution and the law. The mind is not to be led to the conclusion that the individual was present by a train of conjectures or inferences, or of reasoning. The fact itself must be proved by two witnesses, and must have been committed within the district."

2. Not of murder. For the law is clear, that, in cases of treason, presence at the commission of the overt act is governed by the same principle as constructive presence in ordinary felonies, and has no other latitude, greater or less, except that in proof of treason two witnesses are necessary to the overt act, and one only in murder and other felonies. "A person is not constructively present at an overt act of treason, unless he be aiding and abetting at the fact, or ready to do so, if necessary." 4 Cr., 492. Persons not sufficiently near to give assistance are not principals. And although an act be committed in pursuance of a previous concerted plan those who are not present, or so near as to be able to afford aid and assistance, at the time when the offense is committed, are not principals, but accessories before the fact. Wharton Am. Crim. Law, 112 to 127.

It is, therefore, perfectly clear, upon the law as enacted by the Legislature and expounded by jurists, that Dr. Mudd is not guilty of participating in the murder of the President; that he was not actually or constructively present when the horrid deed was done, either as a traitor, chargeable with it as an overt act, or a conspirator, connected as a principal felon therewith.

3. The only other crimes defined by law for the alleged commission, of which the Judge Advocate may, by possibility, claim the conviction of the accused, are: 1st. The crime of treasonable conspiracy, which is defined by the law of 21st July, 1861, and made punishable by fine not exceeding \$6,000, and imprisonment not exceeding six years. 2d. The crime of being an accessory before, or after the fact to

the crimes of murder, and of assault with intent to kill. That the accused is not guilty of either of these crimes, will be clearly shown in the discussion of the evidence which follows.

4. Admitting the Secretary's proclamation to be law, it, of course, either supersedes or defines the unknown something or nothing which the Judge Advocate calls "the common law of war." If so, it is a definite, existing thing, and I can defend my clients against it; and it is easy to show that Dr. Mudd is not guilty of violating that proclamation. He did not, after the date of the proclamation, see either of the parties named therein—dress the wound of Booth or point out the way to Herold—and the proclamation relates to future acts, not to past.

5. But of the common law of war, as distinct from the usage of Military Courts, in carrying out and executing the Articles of War, I know nothing, and on examining the books, I find nothing. All that is written down in books of law or authority I am, or ought to be, prepared to meet; but it were idle and vain to search for and combat a mere phantom of the imagination, without form and void.

I now pass to a consideration of the evidence, which I think will fully satisfy the Court that Dr. Mudd is not guilty of treasonable conspiracy, or of being an accomplice, before or after the fact in the felonies committed.

The accused has been a practising physician, residing five miles north of Bryantown, in Charles county, Maryland, on a farm of about five hundred acres, given to him by his father. His house is between twenty-seven and thirty miles from Washington, and four or five miles east of the road from Washington to Bryantown. It is shown by Dr. George Mudd, John L. Turner, John Waters, Joseph Waters, Thomas Davis, John McPherson, Lewellyn Gardiner, and other gentlemen of unimpeached and unquestionable loyalty, who are in full sympathy with the Government, that he is a man of most exemplary character—peaceable, kind, upright and obedient to the laws. His family being slaveholders, he did not like

the anti-slavery measures of the Government, but was always respectful and temperate in discussing them, freely took the oath of allegiance prescribed for voters (Dr. George Mudd), supported an Union candidate against Harris, the secession candidate, for Congress (T. L. Gardiner), and for more than a year past regarded the rebellion a failure. (Dr. George Mudd.) He was never known or reported to have done an act or said a word in aid of the rebellion, or in countenance or support of the enemies of the Government.

An effort was made, over all objections and in violation, I respectfully submit, of the plainest rules of evidence, to blacken his character as a citizen, by showing that he was wont, after the war broke out, to threaten his slaves to send them to Richmond "to build batteries." But it will be seen hereafter, that all that part of the testimony of the same witnesses, which related to the presence of Surratt and of rebel officers at the house of the accused, was utterly false. And Dyer, in presence of whom Eglent says the threat was made to him, swears he was not in the country then, and no such threat was ever made in his presence. The other colored servants of the accused, Charles and Julia Bloyce, and Betty and Frank Washington, say they never heard of such threats having been made; and J. T. Mudd and Dr. George Mudd, and his colored servants Charles and Julia Bloyce, and Betty and Frank Washington, describe him as being remarkably easy, unexacting and kind to all about him—slaves and free-men.

From this brief reference to the evidence of the character of the accused, I pass to a consideration of the testimony adduced to prove his connection with the conspiracy.

And, first, as to his acquaintance with Booth. J. C. Thompson says, that early in November last Booth went to the house of witness' father-in-law, Dr. William Queen, four or five miles south of Bryantown, and eight or ten from Dr. Mudd's, and presented a letter of introduction from a Mr. Martin, of Montreal, who said he wanted to see the county. It does not appear who Martin was. Booth said his business was to in-

vest in land and to buy horses. He went with Dr. Queen's family to a church next day, in the neighborhood of Bryantown, and was there casually introduced, before service, by Thompson, to the accused. After service Booth returned to Queen's house, and stayed until the next morning, when he left. While at Queen's, he made inquiries of Thompson as to horses for sale, the price of lands, their qualities, the roads to Washington, and to the landings on the Potomac; and Thompson told him that the father of Dr. Samuel Mudd was a large landholder, and might sell part of his land. On Monday morning, after leaving Dr. Queen's, Booth came by the house of the accused, who went with him to the house of George Gardiner, to look at some horses for sale. The accused lives about one-quarter of a mile from Gardiner's (Mary Mudd, Thomas L. Gardiner), and on the most direct road to that place from Dr. Queen's, through Bryantown. (Mary Mudd, Hardy.) There Booth bought the one-eyed saddle-horse which he kept here, and which Payne rode after the attempted assassination of Mr. Seward. Mudd manifested no interest in the purchase, but after it was made Booth directed the horse to be sent to Montgomery's Hotel, in Bryantown, and Booth and the accused rode off together in the direction of the house of the accused, which was also the direction of Bryantown. Witness took the horse to Bryantown next morning, and delivered him in person to Booth there. Witness says the horse was bought on Monday; but he thinks in the latter part of November; though he says he is "one of the worst hands in the world to keep dates."

Thompson further says, that after Booth's first introduction and visit to Dr. Queen's, "he came there again, and stayed all night, and left very early next morning. I think it was about the middle of December following his first visit there."

There is nothing whatever to show that Mudd saw Booth on this second visit, or at any other time, in the country, prior to the assassination; but a great deal of evidence that he never was at Mudd's house, or in his immediate neighbor-

hood, prior to the assassination, except once, and on his first visit. I will refer to the several items of testimony on this point.

1st. Thomas L. Gardiner says he was back and forth at Mudd's house, sometimes every day, and always two or three times a week, and never heard of Booth being there, or in the neighborhood, after the purchase of the horse and before the assassination.

2d. Mary Mudd says she saw Booth one Sunday in November at church, in Dr. Queen's pew, and with his family, and that she heard of his being at the house of her brother, the accused, on that visit, but did not hear that he stayed all night; and that on the same visit he bought the horse of Gardiner. She lives at her father's, on the farm adjoining that of accused, and was at his house two or three times a week, and saw him nearly every day on his visits to his mother, who was an invalid, and whose attending physician he was; and never saw or heard of Booth, except on that one occasion, before the assassination.

3d. Fanny Mudd, sister of the accused, living with her father, testifies to the same effect.

4th. Charles Bloyce was at the house of the accused Saturday and Sunday of each week of last year until Christmas Eve (except six weeks in April and May), and never saw or heard of Booth's being there.

5th. Betty Washington (colored) lived there from Monday after Christmas until now, and never saw or heard of Booth there before the assassination.

6th. Thomas Davis lived there from 9th of January last. Same as above.

Nor is there any evidence whatever of Booth's having stayed all night with the accused on the visit when the horse was bought of Gardiner, or at any other time, except that of Col. Wells, who says, that after Mudd's arrest, "he said, in answer to another question, that he met Booth some time in November. I think he said he was introduced by Mr. Thompson, a son-in-law of Dr. Queen, to Booth. I think he said the

introduction took place at the chapel or church on Sunday morning; that, after the introduction had passed between them, Thompson said, Booth wants to buy farming lands; and they had some little conversation on the subject of lands, and then Booth asked the question, whether there were any desirable horses that could be bought in that neighborhood cheaply; that he mentioned the name of a neighbor of his who had some horses that were good travelers; and that he remained with him that night, I think, and the next morning purchased one of those horses." Now, it will be recollected that Thompson says Booth stayed at Dr. Queen's on that visit Saturday night and Sunday night, and Thomas L. Gardiner says the horse was bought Monday morning. So that, if Col. Wells is correct in recollecting what Mudd said, then Thompson must be wrong. It is more probable that Thompson is right, as to Booth's having spent Sunday night at Queen's. Thompson's testimony is strengthened, too, by that of Mary Mudd, Fanny Mudd and Charles Bloyce, who would, in all probability, have heard the fact of Booth spending Sunday night at the house of the accused, had he done so; but they did not hear it.

It is here to be observed, that though the accused was not permitted to show, by Booth's declarations here, that he was contemplating and negotiating purchases of lands in Charles county, yet evidence was admitted as to his declarations made there to that effect. Dr. Bowman, of Bryantown, says that Booth negotiated with him, on one of these visits, for the purchase of his farm, and also talked of buying horses. And a few days after witness had negotiated with Booth for the sale of his farm, he met Dr. Mudd, and spoke of the negotiation with Booth, and Mudd said, "Why that fellow promised to buy my land." It is also shown by Dr. Blanford, Dr. Bowman, M. P. Gardiner and Dyer, that Mudd, for a year past, wanted to sell his land, and quit farming.

This, then, is all that is shown of any meeting between Mudd and Booth in that country before the assassination—a casual introduction at church on Sunday in November—

Booth going next morning to Mudd's, talking of buying his farm, and riding with him a quarter of a mile to a neighbor's to buy a horse, and their going off together toward Mudd's and Bryantown, where the horse was delivered to Booth next morning.

We will now turn to consider the evidence as to the accused's acquaintance with John H. Surratt. If he knew Surratt at all, the fact is not shown by, nor inferable from, the evidence. Miss Surratt was educated at Bryantown, before the war, and her family lived at Surrattsville, and kept the hotel there (which is on the road from Dr. Mudd's house to Washington), until they removed, in October last, to a house on H street, in this city, where they have since resided. (Miss Surratt, Holahan, Weichmann.) Dr. Mudd probably had met Surratt at the hotel at Surrattsville, or, before the war, at Bryantown, while his sister was at school; but it is not shown by credible testimony that he knew him at all. Let us examine the evidence on this point.

1st. Mary Simms, formerly Dr. Mudd's slave, says that a man whom Dr. and Mrs. Mudd called Surratt was at Mudd's house from almost every Saturday night until Monday night through the latter part of the winter, and through the spring and summer of last year until apples and peaches were ripe, when she saw him no more; and that on the last of November she left Dr. Mudd's house. That he never slept in the house, but took dinner there six or seven times. That Andrew Gwynn, Bennett Gwynn, Capt. Perry, Lieut. Perry, and Capt. White, of Tennessee, slept with Surratt in the pines near the spring, on bed-clothes furnished from Dr. Mudd's house, and that they were supplied by witness and by Dr. Mudd with victuals from the house. That William Mudd, a neighbor, and Rachel Spencer, and Albin Brooke, members of Mudd's household, used to see Surratt there then. She says that the lieutenants and officers had epaulettes on their shoulders, gray breeches with yellow stripes, coat of same color and trimming. Their horses were kept in Dr. Mudd's stable, by Milo Simms.

2d. Milo Simms, brother of Mary, fourteen years old, formerly slave of Dr. Mudd, left there Friday before last Christmas. Saw two or three men there last summer, who slept at the spring near Dr. Mudd's house. Bedding taken from the house; meals carried by Mary Simms, generally, though they sometimes ate in the house, and they all slept at the spring, except one called John Surratt, who slept once in the house. Don't say how long they stayed. It was in "planting tobacco time." He attended their horses in Dr. Mudd's stable.

3d. Rachel Spencer, slave of Dr. Mudd and cook at his house, left him early in January, 1865; saw five or six men around Dr. Mudd's house last summer; slept in the pines near the house, and were furnished with meals from it. Were dressed in black and blue. Were there only a week, and never saw them there before or since. She heard no names of the men except Andrew Gwynn and Watt Bowie. That Albin Brooke lived at Dr. Mudd's then, and was with these men occasionally.

4th. Elzee Eglen, formerly Dr. Mudd's slave, left him 20th August, 1863; saw a party sleeping in the pines, by the spring, near the house, summer before last. Knew Andrew Gwynn, and he was one of them; did not recollect any other names. Mary Simms carried them meals, and Milo Simms attended the horses in Dr. Mudd's stable. Some wore gray clothes with brass buttons, but without other marks—some black clothes. Did not say how many there were, nor how long they stayed.

5th. Melvina Washington, formerly Dr. Mudd's slave, left him October, 1863; saw party sleeping in the pines near the house summer before last; victuals furnished from the house. Party stayed there about a week, and then left. Some were dressed in gray, and some in short jackets with little peaks behind, with black buttons. She saw them seven or eight times during one week, and then they all left, and she never saw any of them at any other time except during that week. That Andrew Gwynn's name was the only one she

heard; that Mary Simms used to tell her, when the men were there, the names of others, but she had forgotten them.

That these five witnesses all refer to the same party of men and the same year is certain, from the fact that Elzee Eglen says that Mary Simms carried the party he describes as being there in the summer of 1863, their victuals, and that Milo Simms kept their horses in the stable, and Melvina Washington says Mary Simms used to tell her the names of the party which she describes as being there in 1863; and also from the fact that all of them, except Milo Simms, named Andrew Gwynn as being one of the party. I will not waste the time of the Court in pointing out to it in detail the discrepancies in their evidence apparent from the foregoing synopsis of their testimony; and therefore, only calling its attention to the fact that all of these witnesses were living with Dr. Mudd during and after the year 1861 (Dyer), down to the several dates given above, when they respectively left, I will proceed to show from the evidence what and when the occurrences really were about which they have testified.

1st. Ben Gwynn (named by Mary Simms as one of the party) says:

During last summer, Captain White, from Tennessee, Captain Perry, Lieut. Perry, Andrew Gwynn and George Gwynn, or either of them, were not about Dr. Samuel A. Mudd's house for several days; do not know any of the parties and I never heard of them, except Andrew Gwynn and George Gwynn.

Have not been in Dr. Mudd's house since about the first of November, 1861; have not been on his place, or nearer his place than church, since about the 6th of November, 1861.

We slept in the pines near the spring four or five days. I left my neighborhood, and went down there and stayed around in the neighborhood—part of the time at his place, and part of the time elsewhere. He fed us there—gave us something to eat, and had some bed-clothing brought out of the house. That was all.

He further said, that the party was composed of his brother, Andrew Gwynn, and Jerry Dyer, who, on the breaking out of the war, were, like all the people of that section, panic-stricken, and apprehending arrest; that he came up to Washington on the 10th of November, gave himself up, found

there were no charges against him, took the oath, and went back home. That John H. Surratt, when this party were there, was at college, and witness never saw him in Charles county then or since. That his brother, Andrew Gwynn, went South in the fall of 1861, and was never, to his knowledge, back in that county but once since, and that was last winter some time. He corrected his statement as to when the party were there, and fixed it in August, 1861.

2d. Jerry Dyer, brother-in-law of the accused, testifies to the same as Ben Gwynn. Says he and the two Gwynns were members of companies organized by authority of Governor Hicks for home protection in 1860; were present on parade in Washington at the inauguration of a statute, on the 22d of February, 1860. When the war broke out the companies were disbanded; many of the members going South, and many of those who remained in Charles county scattering about from rumors of arrests; that there was a general panic in the county then, and almost everybody was leaving home and "dodging about;" that while he and the two Gwynns slept in the pines these three or four days, Mary Simms carried them victuals from the house, and Milo Simms attended to the horses in Mudd's stables; that they were dressed in citizens' clothing; that Andrew Gwynn went South in the fall of 1861; witness never heard of his being back since; that Surratt was not there then, nor, so far as he knows, since.

3d. William Mudd, a near neighbor of the accused, named by Mary Simms as having seen the party she describes, says he saw Benjamin Gwynn there in 1861, but saw none of the others, then or since.

4th. Albin Brooke, referred to by Mary Simms and Rachel Spencer as having seen the party they describe (and by Mary Simms as having seen Surratt especially), says he knows Surratt, having met him in another county once, and knew Benjamin Gwynn and Andrew Gwynn, but that he never saw Surratt with any of the men named by Mary Simms at Dr. Mudd's, nor heard of his having ever been there;

never heard of Andrew Gwynn being back from Virginia since 1861. That he lived at Dr. Mudd's from the 1st of January to between the 1st and the 15th of September of last year, and was at the stable morning, noon and night, each day, and was about the spring daily; while there, never saw any strangers' horses in the stable nor any signs about the spring of persons sleeping there; but that, while living near Dr. Mudd's, in the summer of 1861, he knew of Ben and Andrew Gwynn and Dyer sleeping in the pines there.

5. Mrs. Mary Jane Simms boarded, or was a guest, at Dr. Mudd's all last year, except through March; knew Andrew, Ben and George Gwynn and George Surratt. Never saw or heard of any of them there, nor of any of them sleeping in the pines.

6th. Frank Washington (colored) lived at Dr. Mudd's all last year; knew Andrew Gwynn by sight; never saw or heard of him or Surratt (of whom a photograph was shown him), or of any of the men named by Mary Simms, being there or of any men being there in uniform; at the stable three times daily, and often at the spring, and saw no strange horses in the stable; saw no signs of men sleeping about the spring.

7th. Baptist Washington, carpenter, at work there putting up kitchen, etc., from February till Christmas last year, except the month of August; same as above, except as to knowledge of Andrew Gwynn. (Photograph of Surratt shown him.)

8th. Charles Boyce (colored), at Dr. Mudd's through every Saturday and Sunday all last year, except from 10th April to 20th May; same as Frank Washington, except as to knowing Andrew Gwynn.

9th. Julia Ann Bloyce (colored cook), there from early in July to 23d December, 1864; same, substantially, as Frank Washington; knew Ben and Andrew Gwynn. (Photograph of Surratt shown witness.)

10th. Emily Mudd and Fanny Mudd live on adjoining farm to Dr. Mudd, at his father's; at his house almost daily for years; knew of the party in the pines in 1861, composed

of Dyer and the two Gwynns; knew Andrew Gwynn well; never heard of his being back from Virginia since 1861, nor of Surratt ever being at Dr. Mudd's, nor of any of the others named by Mary Simms, except the Gwynns, in 1861.

11th. Henry L. Mudd, jr., brother of the accused, living at his father's; same as above as to Surratt.

None of the five witnesses, whose testimony has been shown false in all essential parts by the evidence of the twelve witnesses for defense, referred to above said that Surratt was one of the party sleeping in the pines, except Mary and Milo Simms. These two witnesses are shown to have established reputations as liars, by the evidence of Charles Bloyce, Julia Ann Bloyce and Frank, Baptist and Betty Washington. So all that testimony for the prosecution, of the "intelligent contrabands," who darkened the counsels of the court in this case, is cleared away. The only part of it at all admissible under the rules of evidence, or entitled to the consideration of the Court, was that showing Surratt was intimate with Mudd, and often at his house last year and year before; and that, like nearly all the rest of their testimony, has been conclusively shown to be false.

Another witness, who testifies to implicate Mudd as an associate of Surratt, is William A. Evans, who said he saw Mudd some time last winter enter a house on H street, just as Judson Jarboe, of Prince George's county, was going out of it; and that Jarboe was then shaking hands with a young lady, whom witness took to be a daughter of Mrs. Surratt, from her striking likeness to her mother, he having known or seen all the family; and that he stopped a policeman on the street, and asked whose house it was, and he said, "Mrs. Surratt's;" and that he drove up to the pavement, and asked also a lady who lived near by and she said the same. He said this house was between Eighth and Ninth, or Ninth and Tenth—he was not perfectly certain as to the streets, but was certain it was between the Patent Office and the President's. Through an hour's cross-examination, he fought by equivocation, or pleading defect of memory, against fixing

any circumstance by which I could learn, directly or indirectly, the day or the month when it occurred, and, finally, he could only say it was "some time last winter." Although his attention had been so strongly attracted to the house, he first said it was on one side of the street and then on the other; and could not tell whether it had any porch or any portico, nor describe its color, nor whether it had a yard in front, nor whether it was near the center of the square, nor describe a single house on either side of the same square. He said he knew Dr. Samuel Mudd, having met him first at Bryantown church, in December, 1850.

Every material thing he did say, which was susceptible of being shown false, has been so shown.

1st. Mrs. Surratt's house is not between the Patent Office and the President's, but next the corner of Sixth. (Weichmann, Holahan, Miss Surratt.)

2d. Miss Surratt, an only daughter, says she never saw or heard of Samuel Mudd being at her mother's house, nor heard his name mentioned in the family, and never met Judson Jarboe there or elsewhere before the assassination.

3d. Miss Fitzpatrick, who boarded at Mrs. Surratt's from the 6th of October last to the assassination, and Holahan, who was there from the first week of February last never saw either Mudd or Jarboe there, or heard of either being there, or the name of either mentioned in the family.

4th. Weichmann who boarded there through last winter, never heard of Mudd being at the house.

5th. Judson Jarboe says he never was at Mrs. Surratt's house, or met Dr. Mudd or Miss Surratt in Washington before the assassination.

6th. Mary Mudd says Samuel Mudd was at Frederick College, at Fredericktown, Maryland, in December, 1850, and was not at home during the collegiate year, beginning in September of that year; and Rev. Dr. Stonestreet, who was president of that college until December of that year, testifies the accused was then entered as a student there and could not by the rules of the college have gone home.

This witness, Evans, boasted often to the Court that he was a minister of the Gospel, and reluctantly admitted, on cross-examination, that he was also one of the secret police. In his reckless zeal as a detective, he forgot the ninth commandment, and bore false witness against his neighbor. It is to be hoped his testimony that he is a minister of the Gospel is as false as his material evidence. I feel bound in candor to admit, however, that his conduct on the stand gave an air of plausibility to one of his material statements—that for a month past he has “been on the verge of insanity.”

I have now presented and considered all the testimony going to show that Mudd ever met Surratt at all, and all that he ever met Booth, before the assassination, and after the first visit Booth made to Charles county—except the testimony of Weichmann, which I will now consider.

That witness says that about the middle of January last, he and Surratt were walking down Seventh street one night, and passed Booth and Mudd walking up the street, and just after they had passed, Mudd called, “Surratt, Surratt.” Surratt turned and recognized Mudd as an old acquaintance, and introduced Mudd to witness, and then Mudd introduced Booth to witness and Surratt. That soon after the introduction, Booth invited them all to his room at the National Hotel, where wine and cigars were ordered. That Dr. Mudd, after the wines and cigars came, called Booth into the passage, and they stayed there five to eight minutes, and then both came and called Surratt out, and all three stayed there about as long as Mudd and Surratt had stayed, both interviews together making about ten to twenty minutes. On returning to the room, Dr. Mudd seated himself by witness, and apologized for their private conversation, saying, “that Booth and he had some private business—that Booth wished to purchase his farm.” And that, subsequently, Booth also apologized to him, giving the same reason for the private conversation. Booth at one time took out the back of an envelope, and made marks on it with a pencil. “I should not consider it writing, but more in the direction of roads or lines.” The three were

at the time seated round a center table in the middle of the room. "The room was very large—half the size of this court room." He was standing, when this was done, within eight feet of them, and Booth was talking in a low tone, and Surratt and Mudd looking on the paper, but witness heard no word of the conversation. About twenty minutes after the second return from the passage, and after a good deal of general conversation, they all walked round to the Pennsylvania House, where the accused sat with witness on a lounge, and talked about the war, "expressed the opinion that the war would soon be over, and talked like a Union man." Soon after getting there, Booth bade the accused good night, and after Booth left, witness and Surratt followed, at about half-past ten o'clock.

It will be observed that the only men spoken of by this witness as having seen the accused on this occasion are, Booth, who is dead, and Surratt, who is a fugitive from the country. So there is no one who can be called to confirm or confute his statements, as to the fact of these men being together, or as to the character of the interview. But there was one fact about which he said he could not be mistaken, and by means of which his evidence against Mudd is utterly overthrown. That is, he alleges the meeting was about the middle of January, and fixes the time with certainty by three distinct circumstances:

1st. He made a visit to Baltimore about the middle of January, and near the date of this meeting.

2d. He had, before the meeting, got a letter, which he received on the 16th of January.

3d. It was after the Congressional holidays, and Congress had resumed its session. He recollects this fact of itself, and is confirmed in his recollection by the fact that Booth's room was one a member of Congress had occupied before the holidays, and which was given Booth, as he learned, until the member, who had been delayed beyond the time of the reassembling of Congress, should return. Booth told him this.

In refutation of this evidence, we have proved, beyond all

controversy, that Dr. Mudd was not in Washington from the 23d of December to the 23d of March.

On the 23d of December he came to Washington with J. T. Mudd, who says they left their horses at the Navy Yard, and went into the city at dark, on the street cars, and registered at the Pennsylvania House. They then went out and got supper at a restaurant, and then went to the Metropolitan Hotel and stayed there together a quarter of an hour, and then to the National, where witness met a friend, and became separated in the crowd from the accused. Witness strolled out and went back to the Pennsylvania House, to which accused returned in a few minutes after he got there. . He saw and heard no one with the accused, though there might have been persons with him in the front part of the room (which was separated from where witness sat by open folding doors), without witness seeing them. Witness and accused then went to bed; were together all next day; were about the market together, and at the store making purchases; were not at the National Hotel, and left the city about one o'clock in the afternoon of the 24th, and returned home together. Witness never saw Booth, except on his visit to Bryantown in November. We have shown by the evidence of Lucas, Montgomery, Julia Bloyce and Jerry Mudd, that accused came here on that visit on a sufficient and legitimate business errand—to purchase a cooking stove and other articles, which he bought here then.

On the 23d of March Lewellyn Gardiner said accused again came to Washington with him to attend a sale of condemned horses, but that the sale did not occur at that time. They got to Washington at four or five p. m., left their horses at Martin's, beyond the Navy Yard, and went about looking at some wagons for sale, and went then to the Island to the house of Henry Clark, where they took tea. They spent the evening at Dr. Allen's playing whist; slept together that night at Clark's, and after breakfast next morning went through the Capitol, looking at the paintings in the rotunda, and returned to Martin's at dinner, and after dinner left and returned home. Accused was not separated from or out of

sight of witness five minutes during the whole visit, and did not go to any of the hotels or to the post-office, or see or inquire for Booth. Dr. Allen, Clark, Martin, Thomas Davis, Mary Mudd, Henry Mudd and Betty Washington confirm witness as to the objects or incidents of the visit.

On the 11th of April, three days before the assassination, while Booth, as appears by the hotel register, was at the National in this city, accused came to Giesboro to attend the sale of Government horses, which he and Lewellyn Gardiner had come on the 23d of March to attend. Though in sight of Washington he did not come into the city, but took dinner at Martin's, and after dinner left and returned home. On this visit he stayed all night at Blanford's, twelve miles from the city, coming up, but not returning. (Lewellyn Gardiner, Henry L. Mudd, Dr. Blanford, Martin, Davis, Betty Washington, Mary Mudd.)

On the 26th of January he went with his wife to the house of his neighbor George H. Gardiner, to a party, and stayed till daylight. (Betty Washington, Thomas Davis, Mary Mudd.) Except for one night on the occasion of each of those four visits—two to Washington, one to Giesboro, and one to Gardiner's—accused was not absent from home a night from the 23d of December until his arrest. (Betty Washington, Thomas Davis, Henry L. Mudd, Mary Mudd, Frank Washington.)

After the evidence for the defense above referred to had been introduced, refuting and completely overwhlming Weichmann's testimony and all inferences as to Dr. Mudd's complicity with Booth, which might be drawn from it, a new accuser was introduced against him on the same point, in the person of Marcus P. Norton, who said that at half-past 10 o'clock on the morning of the 3d of March, as he was preparing his papers to go to the Supreme Court to argue a motion in a patent case there pending (which motion the record of the Court shows he did argue on that day) a stranger abruptly entered his room and as abruptly retired, saying he was looking for Mr. Booth's room; and though witness never saw Dr. Mudd before or since, until the day of his

testifying, he says that stranger is the prisoner at the bar. He could not tell any article of the stranger's clothing except a black hat. Wm. A. Evans, a part of whose evidence we have hereinbefore considered, comes to the support of Norton by saying that early on the morning of either the 1st, or 2d, or 3d of March (witness is certain it was one of those three days), Dr. Mudd passed witness on the road from Bryantown to Washington, a few miles from the city, driving a two-horse rockaway, and there was a man in with him, but whether a black or a white man witness could not recollect. Fortunately for the accused, the 1st day of March was Ash Wednesday—the first day of Lent—a religious holiday of note and observance in the community of Catholics among whom he lived. Fortunately for him, too, his sister Mary was taken ill on that day, and required his medical attendance (at her father's house, on the farm adjoining his own, thirty miles from Washington) each day, from the 2d to the 7th of March, inclusive. By the aid of these two circumstances we have been able to show, by Thomas Davis, that accused was at home at work on the 28th of February—the day before Ash Wednesday; by Dr. Blanford, Frank Washington and Betty Washington, that he was there at work at home on the 1st of March; by Mary, Fanny, Emily and Henry L. Mudd, Betty and Frank Washington and Thomas Davis, that he was there on the 2d, 3d, 4th and 5th of March, at various hours of each day. At or within two hours of the time when Norton says he saw the accused enter the room at the Natonal (half-past 10 a. m., 3d of March), Mary, Emily, Fanny and Henry L. Mudd, Frank and Betty Washington, Thomas and John Davis, all testify most emphatically to having seen him at his house on his farm, or at his father's house adjacent to his own—six hours' ride from Washington! We have shown, too, by Mary Mudd, that the accused has always worn a lead-colored hat whenever she has seen him this year, that she has seen him almost daily; and by Henry Mudd, Dr. Blanford and Mary Mudd, that neither he nor his father owns a rockaway. Now, Norton either saw the accused enter his room on the morning of the 3d of March, or not at all,

for his evidence, clinched as to the date by the record of the Supreme Court, excludes the supposition that he could have been mistaken as to the day. Nor can these eight witnesses for the defense be mistaken as to the day, for the incidents by which they recollect Mudd's presence at home, fix the time in their memories exactly. With all this evidence before the Court, it can not hesitate to hold the alibi established beyond all cavil.

The only other item of evidence as to anything done or said by Dr. Mudd, or by anybody, before the assassination, tending in the least to show him implicated in the conspiracy, is the evidence of Daniel J. Thomas, who says that several weeks before the assassination he met Mudd at the house of his neighbor, Downing, and there, in the course of conversation, Mudd said (laughingly) that "Lincoln and his whole Cabinet, and every Union man in the State of Maryland, would be killed within six weeks." Witness said he wrote to Col. John C. Holland, provost marshal of that district, at Ellicott's Mills, before the assassination, advising him of Mudd's statement. But Col. Holland says he got a letter from witness about that time, and there was not a word of the statement in it, nor a reference to the accused, nor to any statement by anybody about killing anybody. Thomas says he told his brother, Dr. Thomas, of the declaration before the President was killed, but his brother says emphatically he did not tell him until after Mudd's arrest—the boot found at Mudd's house having been named in the same conversation. Thomas says he told Mr. Downing about it before the assassination, but Downing says emphatically he did not tell him a word about it at any time. Downing also says that he himself was present every moment of the time Mudd and Thomas were together at his house, and heard every word said by either of them, and Mudd did not make that statement, nor refer to the President, or the Cabinet, or the Union men of Maryland, at all, nor say a word about anybody being killed. He says, however, Mudd, when Thomas was bragging and lying about being a provost marshal, did tell him, "he was a jack," which insult was doubtless an incentive to the

invention of the calumny. But it was not the only incentive. Thomas knew that if that lie could be palmed off on the Judge Advocate and the Court for truth, it might lead to Mudd's arrest and conviction as one of the conspirators. He had, on Tuesday, before Mudd's arrest, and before this lie was coined and circulated, been posting handbills, containing the order of the War Department offering liberal rewards for any information leading to the arrest of Booth's accomplices, and he then doubtless conceived the idea of at once getting reward in money from the Government for his information, and revenge on Mudd for his insult in Downing's house.

That he gave that evidence corruptly is shown by William Watson, John R. Richardson and Benjamin Naylor, who say that Thomas, after testifying against Mudd, went to see them, and said that "if Dr. Mudd was convicted upon his testimony, he would then have given conclusive evidence that he gave the information that led to the detection of the conspirator!" "He then asked Mr. Benjamin J. Naylor if he did not mention to him and Gibbons, before the killing of the President, the language that Dr. Mudd had used. Mr. Naylor said that he had never done it before or after!" "He said his portion of the reward ought to be \$10,000—and asked me (Watson) if I would not, as the best loyal man in Prince George's county, give him a certificate of how much he ought to be entitled to." The testimony of Richards, and of Eli J. Watson, coupled with Thomas' testimony in denial of these statements, fill the record of infamy of this false witness.

To accumulate evidence that Thomas' statement is utterly unreliable, the defense brought over twenty of his neighbors, who testified that he could not be believed on oath—among whom were Naylor, Roby, Richards, Orme, Joseph Waters, John Waters, J. F. Watson, Eli Watson, Smith, Baden, Dickens, Hawkins, Monroe and others, of undisputed loyalty, nearly all of whom had known him from boyhood. His brother, Dr. Thomas, testifies that he is at times deranged; and Dr. George Mudd says that he is mentally and morally insane. And,

although Thomas' evidence was the most important in the case against Dr. Mudd, the Judge Advocate has not seriously attempted to sustain him—has not tried to show that he ever told or hinted at this story to anybody before the assassination—and has not asked one of the scores of witnesses for the prosecution in attendance from Thomas' neighborhood a question as to his reputation for veracity—except Wm. Watson, who said it was decidedly bad. A feeble attempt was made to sustain him, by endeavoring to show that he was a zealous supporter of the Administration, and that, therefore, the general voice of his community was against him. But we showed that he was a rebel at the beginning of the war, and an opponent of the Administration at the last election—and then the Judge Advocate dropped him!

This is all the evidence of every act or word done or said by anybody, prior to the assassination, tending in the remotest degree to connect Mudd with the conspiracy. It consists in large part, of the testimony of the five negroes, as to the Confederate officers frequenting Mudd's house last year and the year before—two of them, Milo and Mary Simms, as to Surratt's visiting his house last year—of Evans, as to Mudd's going to Surratt's house last winter—of Evans and Norton, as to Mudd's being here on the 3d of March—of Weichmann, as to the interview between Mudd, Booth and Surratt, about the middle of January, and of Thomas, as to Mudd's prediction of the assassination in March. I venture to say that rarely in the annals of criminal trials has the life of an accused been assailed by such an array of false testimony as is exhibited in the evidence of these nine witnesses—and rarely has it been the good fortune of an innocent man, arraigned and on trial for his life, to so confute and overwhelm his accusers. I feel it would be a waste of time, and an imputation on the intelligence of the Court to delay it with fuller discussion of the evidence of these witnesses, and feel sure it will cast their testimony from its deliberations, or recollect it only to reflect how foully and mistakenly the accused has been assailed.

Having now discussed all the evidence adduced that calls

for discussion, or may by possibility be relied on as showing Mudd's acquaintance with Booth, or connection with the conspiracy, and having, I think, shown that there is no reliable evidence that he ever met Booth before the assassination but once on Sunday, and once the day following, in November last, I will proceed to a consideration of the testimony relied on to show that he knowingly aided the escape of the assassin.

First. Why did Booth go to Dr. Mudd's and stop there from daybreak till near sundown on his flight? I answer, because he had a broken leg and needed a physician to set it. And as to the length of the stay, the wonder is he was able to ride off on horseback with his broken and swollen limb at all—not that he took ten hours' rest. The Court will observe from the map in evidence, that Booth, taking Surrattsville in his route to Pope's creek, opposite Matthias Point, where he crossed the Potomac (Capt. Doherty), traveled at least eight or ten miles out of his way to go, after leaving Surrattsville, by Dr. Mudd's. (See Dyer's testimony.) Would he have gone that far out of his route to the Potomac crossing if he had not broken his leg? Or was it part of his plan to break it? Obviously, he could not in advance have planned to escape by crossing the Patuxent, nor to evade his pursuers by lying concealed in Charles county, within six hours' ride of Washington. He must, as a sane man, have contemplated and planned escape across the Potomac into Virginia, and thence South or abroad; and it could never have been part either of the plan of abduction, or of that of assassination, to go the circuitous route to a crossing of the Potomac by Bryantown or Dr. Mudd's. So that the fact of Booth going to the house of the accused and stopping to get his leg set and to rest, does not necessarily lead to any conclusion unfavorable to the accused.

Booth got there, with Herold, about daybreak (Frank Washington). He usually wore a mustache (see photograph), but he then wore heavy whiskers, and had his face muffled in a shawl, so as to disguise him. The disguise was kept up all day (Col. Wells). He was taken to a lounge in the hall, and then to a front room upstairs, where the broken bone

was set, where a fee of \$25 was paid for the service, and where, it is probable, he slept most of the day. They represented that the leg had been broken by a fall of the horse; that they had come from Bryantown, and were going to Parson Wilmer's. After breakfast accused went to his field to work. Herold, whom Mudd had never met (Colonel Wells), came down to breakfast and dinner with the family, and after dinner he and Mudd went off together to the house of Mudd's father to get a family carriage to take the wounded man to the house of Parson Wilmer, five miles off, at Piney Chapel (Lovett Wells). Now, can any man suppose for a moment that Mudd, at this time, had the slightest suspicion or intimation of the awful tragedy of the night before? Could he, knowing or suspecting the crime or the criminal, have thus recklessly given himself up to arrest and trial, by publicly aiding the escape of the assassin? Could he have been ready to expose his old father to suspicion by thus borrowing his carriage, which would have been noticed by every man, woman and child on the road, to carry off the assassin? Impossible! I need nothing more of the Court than its consideration of this fact, to clear the accused of all suspicion of having, up to that time, known or suspected that a crime had been committed by the crippled stranger, whom he was thus openly and kindly seeking to aid.

But the carriage could not be got, and Mudd and Herold rode off toward Bryantown to get one there. Col. Wells thinks the accused told him that Herold turned back when getting one and a half miles from the elder Mudd's house, saying he could take his friend off on horseback. Betty Briscoe and Eleanor Bloyce, however, say they saw a man riding toward Bryantown with the accused, who turned back at the bridge at the edge of the town.

Mudd made some purchases of calico and other articles, and heard of the assassination (Bean). It was not generally known then among the citizens who was the assassin (Bean, Roby, Trotter, B. W. Gardiner, M. L. McPherson, John McPherson). In fact, it was not generally known with certainty at the theater, or in Washington, Friday night,

whether Booth was the murderer (Gobright). In Bryantown it was commonly understood that Boyle, a noted desperado of that region, who assassinated Capt. Watkins last fall, was one of the assassins (M. L. McPherson, Bean, Trotter, Roby). It was not known that the murderer had been tracked into that neighborhood (Bean, Dr. Geo. Mudd). Lieutenant Dana told Dr. Geo. Mudd, Saturday afternoon, that Boyle assassinated Mr. Seward, and Booth the President, but that he thought Booth had not then got out of Washington. Even next day (Sunday) it was reported there that it was Edwin Booth who killed the President.

The accused left Bryantown about four o'clock to return home. Betty Briscoe says the same man who had turned back at the bridge stopped in the edge of a branch, which the road crosses a couple of hundred yards from the bridge, until Mudd returned from the town, and then they rode off together across the branch, "up the road." But Booz says he saw Mudd a couple of hundred yards beyond that crossing leisurely going through the farm Booz lives on, by a near-cut which he usually traveled, alone; and that he would himself have probably noticed the man at the crossing, which was in full view of where he was, had he been waiting there; and would have certainly noticed him had he been with Mudd traveling the main road, when Mudd turned into the cut-off through the farm—but he saw no one but the accused. Susan Stewart also saw Mudd in the by-road returning home alone, and did not see any man going the main road, which was in full view. I call the attention of the Court to the plat by which the branch and these roads are shown, and to the fact that there is no road turning off from the main road between Booz's place and Bryantown, except the side road by Booz's house. If further refutation of the testimony of Betty Briscoe on this point be required, it is found in the evidence of Primus Johnson, who saw Herold pass the elder Mudd's in the main road, going toward the house of the accused, and some time after that, himself caught a horse in the pasture, and rode toward Bryantown, and met and passed Dr. Mudd coming leisurely from Bryantown, alone, at Booz's farm; and

that from the time he saw Herold until he met and passed Mudd was full an hour and a half. And in the evidence of John Acton, who was on the roadside, three miles from Bryantown, when Herold passed, at between three and four o'clock, and who remained there an hour, and Dr. Mudd did not go by in that time. Acton also says that, between the time Herold and Mudd went toward Bryantown and the time Herold returned alone, but was three-quarters of an hour. From the fact that Herold could not have ridden to the bridge and back in that time (six miles), it seems highly probable that he did not go to the bridge, but turned back about where Colonel Wells thinks Mudd said he did. But however that may be is not important, as it is certain from the evidence of these four witnesses that Herold did not wait at the branch for Mudd's return from Bryantown.

As Mudd rode home, he turned out of his way to see his neighbor, Hardy (who lives half way between the house of the accused and Bryantown), about some rail timber he had engaged there. The house is not in view of the road, a clump of pines intervening. He told Hardy and Farrell of the news. Hardy says:

"He said to me that there was terrible news now, that the President and Mr. Seward and his son had been assassinated the evening before. Something was said in that connection about Boyle (the man who is said to have killed Captain Watkins) assassinating Mr. Seward. I remember that Booth's name was mentioned in the same connection, and I asked him if Booth was the man who had been down there. His reply was that he did not know whether it was that man or one of his brothers; he understood that he had some brothers. That ended the conversation, except that he said it was one of the most terrible calamities that could have befallen the country at this time.

"Q. Did you say that it was understood or said that Booth was the assassin of the President? A. There was some such remark made, but I do not exactly remember the remark."

They both say he seemed heartily sorry for the calamity, and that he said he had just come from Bryantown, and heard the news there. Hardy says he stayed there only about ten minutes, and left just about sundown. Farrell corroborates Hardy as to the conversation, except that he reports

nothing as to Boyle's name being mentioned; but he says the conversation was going on when he joined Hardy and Mudd. He says the house is less than a quarter of a mile off the road, and that accused stayed there about fifteen minutes.

Now, I ask the Court, what is there up to this point to indicate that Mudd knew or had any suspicion that the broken-legged man was implicated in the crime? If there is anything in proof showing that fact, I fail to find it. True, he had met Booth twice in November—five months before. Had seen him that dark, cloudy morning at daybreak, faint with fatigue and suffering, muffled in his shawl and disguised in a heavy beard; had ministered to him in the dim light of a candle, whose rays struggled with the dull beams of the opening day; had seen him, perhaps, sleeping in the darkened chamber, his mustache then shaved off, his beard still on, his effort at concealment still maintained (Wells). And here let me remind the Court that there is nothing in the evidence showing that Booth spoke a word, but where either of the men are referred to as saying anything, "the smaller man" was the spokesman. Let it be remembered, too, that Booth was an actor, accustomed by years of professional practice to disguise his person, his features, and his tones, so that if Mudd had been an intimate associate, instead of a mere casual acquaintance, it would have been easy for Booth to maintain a disguise even when subjected to close scrutiny under circumstances favorable to recognition. If the Court will also consider with what delicacy a physician and a gentleman would naturally refrain from an obtrusive scrutiny of a patient coming to his house under the circumstances, they will appreciate how easy it was for Booth to avoid recognition, and how probable that Mudd had no suspicion who his patient was. Had he recognized Booth before he went to Bryantown, and heard there that name connected with the "terrible calamity," would he have jogged quietly home, stopping to chat with Booz, to look after his rail timber, to talk of the names of the assassins with his neighbors? Unless the Court start out with the hypothesis of guilt, and substitute unsupported suspicion for proof—which I respect them too highly to fear

for a moment they will do—they can not charge him with a recognition of Booth before he returned home from Bryantown.

Hardy says it was about sundown when Mudd left; Farrell says about 5 o'clock. He had two miles to ride home. It must have been sundown when he got home, and the men had just gone. Betty Washington says that three or four minutes after Herold (the last of the two) disappeared toward the swamp, Mudd came through the hall to the kitchen, and was then first seen by her after his return from Bryantown. The other servants had not come from the field when the men started, and we are, therefore, left to that one witness to show that the statement of Simon Gavacan, one of the detectives, who says "he thinks" Mudd said he went with them part of the way, is incorrect. It is inconsistent, too, with Mudd's statement to Col. Wells on the subject, which is as follows: "The Doctor said that as he came back to the house he saw the person, that he afterward supposed to be Herold, passing to the left of the house, and toward the barn or the stable; that he did not see the other person at all after he left him at the house, which was about 1 o'clock, I think." This statement, and that of Betty Washington, last above quoted, coincide with, and strengthen each other.

It is true, Dr. Mudd did say to all who asked him, that he had shown Herold the way to Parson Wilmer's by the short route, but this was in the morning, soon after the parties reached the house, and before the idea of the carriage appears to have been suggested. This is shown by the statement of Col. Wells, who says that the accused, in the same conversation in which he said that Booth and Herold had just gone from the house as he came up, told him that "Herold, the younger of them, asked him the direct route to Piney Chapel, Dr. Wilmer's saying that he was acquainted with Dr. Wilmer." He described the main traveled road, which leads to the right of his house, and was then asked if there was not a shorter or nearer road. He said, "Yes; there is a road across the swamp that is about a mile nearer, I think;" he said it was five miles from his house to Piney Chapel by the

direct road, and four miles by the marsh, and undertook to give him (as he said) a description by which they could go by the nearer route. He said that the directions were these: "They were to pass down by his barn, inclining to the left, and then pass straight forward in a new direction across the marsh, and that, on passing across the marsh, they would come to a hill; keeping over the hill, they would come in sight of the roof of a barn, and, letting down one or two fences, they would reach the direct road."

The accused meant, of course, that this inquiry and explanation occurred before his return to the house from Bryantown, and so Col. Wells understood him, for he so in effect says. The statement of the accused to Dr. George Mudd, the next day after Booth left, is to the same effect. He said: "That these parties stated that they came from Bryantown, and were inquiring the way to the Rev. Dr. Wilmer's," thus putting their inquiry for the route to Parson Wilmer's in direct connection with their early explanation as to whence they came.

I have no doubt that Gavacan, the detective, recollects an inference which, and, perhaps, also his associate detective, Williams, drew from Dr. Mudd saying that he had shown Herold the route to Parson Wilmer's; that he showed it as Booth and Herold were leaving. But the inferences of detectives, under the strong stimulus of prospective rewards, are inferences generally of guilt; and that these gentlemen were not free from the weaknesses of their profession, and that they grossly misrepresented Dr. Mudd in other important statements, will presently be shown to the satisfaction of the Court.

Now, if Mudd did not know, when he talked with Hardy about the assassination, and spoke of Booth in connection with it, that the assassin was at his house—as I think the evidence shows he did not—then when did he first suspect it? Col. Wells says his inference was, from something the accused said, that he suspected the crippled man to be Booth before he left the premises. The evidence not only shows that when Mudd returned Booth had gone out of sight, but it also

shows what fact it was that, added to the undue excitement of the strangers, and to the fact that the crippled man shaved off his mustache, thoroughly aroused his suspicion. It was the fact that his wife said to him, after they left, that, as the crippled man came down to go, his false whiskers became detached from his face (Lieut. Lovett). When she told him this, and what he said or proposed to do, was not shown by the prosecution, and, by the rules of evidence, could not be by the defense. But that was a fact which could not probably have been communicated to Mudd by his wife until Booth had gone.

In the evidence adduced as to Mudd's subsequent conduct and statements, I need only call the attention of the Court to two points, for in it there is nothing else against him: 1st. He did not tell on Tuesday that the boot was there, far down in the leg of which was found, by the officers, "J. Wilkes," written in pale ink. I answer, the boot was not found by his wife until several days after the assassin left, and was then found in sweeping under the bed (Hardy). We have every reason to suppose it was not found until after Tuesday, for the accused, on Friday, before a question was asked, or a word communicated to him, told of the boot himself and had it produced, and said, in presence of his wife, it was found by her after the officers were there before (Hardy).

2d. Of the three detectives who went to the house of accused Tuesday, Williams says: Accused denied throughout that two men had been there; yet he says, on cross-examination, that accused, in the same conversation, pointed out the route the men had taken toward Wilmer's. Gavacan said he at first denied two men had passed there, and then admitted it. Lloyd says he denied it from beginning to end, on Tuesday. But Lieut. Lovett, who went with and in command of these detectives, speaking of this interview on Tuesday, says: "We first asked whether there had been any strangers at his house, and he said there were." The three detectives are manifestly mistaken; either from infirmity of memory, or from

some less pardonable cause, they have failed to recollect and truthfully render what Dr. Mudd did say on that subject.

The commentators upon the law of evidence give a caution which it may be well for the Court to observe. They admonish us how easy it is for a corrupt witness to falsify a conversation of a person accused, and as the accused can not be heard, how difficult, if not impossible, contradiction is. How easy for an honest witness to misunderstand, or in repeating what was said, to substitute his own language or inference for the language which was really used, and thus change its whole meaning and import. In no case can the caution be more pertinent than in this. The very frenzy of madness ruled the hour. Reason was swallowed up in patriotic passion, and a feverish and intense excitement prevailed most unfavorable to calm, correct hearing and faithful repetition of what was said, especially by the suspected. Again, and again, and again the accused was catechised by detectives, each of whom was vieing with the others as to which should make the most important discoveries, and each making the examination with a preconceived opinion of guilt, and with an eager desire, if not determination, to find in what might be said the proofs of guilt. Again, the witnesses against the accused have testified under the strong stimulus of a promised reward for information leading to arrest and followed by convictions. (See order of Secretary of War.) At any time and in any community, an advertisement of rewards to informers would be likely to be responded to—at a time, and on an occasion like this, it would be a miracle if it failed of effect. In view of these considerations, the Court can not be too vigilant in its scrutiny of the evidence of these detectives, or too circumspect in adjusting the influence to be given to it.

No more effective refutation of this statement, that Mudd denied on Tuesday that two strangers had been at his house, can be given than to ask how came Lieut. Lovett and the detectives at Dr. Mudd's? They did not scent out the track for themselves. They were at Bryantown on Saturday, and were at fault, and had they been let alone, would probably

have remained at fault, and not have gone to Dr. Mudd's. By whom and when was the information given which brought them there? The next morning after the startling news of the assassination reached him, the accused went to Dr. George Mudd, a man of spotless integrity and veracity and of loyalty, unswerving through all the perilous and distressing scenes of the border war, and fully informed him of all that had occurred—the arrival of the two strangers, the time and circumstances under which they came, what he had done for them, the suspicions he entertained, when they departed, and what route they had taken; and requested him, on his behalf and in his name, to communicate this information to the military authorities on his return that day to Bryantown. Dr. George Mudd did make the communication as requested, on Monday morning, to Lieut. Dana, and further informed him of Dr. Samuel Mudd's desire to be sent for any further information which it might be in his power to give. In consequence of this, and of this alone, Lieut. Lovett and the detectives did, on Tuesday, go to the house of the accused, accompanied by Dr. George Mudd, who prefaced his introduction by informing the accused that, in accordance with his request, he had brought Lieut. Lovett and the detectives to confer with him in reference to the strangers who had been at his house Saturday. Of these facts there is no doubt or dispute. They stand too prominently upon the record to be ignored or evaded. But for this information the detectives would not have been at the house of the accused at all. They came at his request, and when they came it is absurd and idle to say that he denied, almost in the presence of Dr. George Mudd, who had been his messenger and was then in the house, that the two strangers had been there. On the contrary, the evidence shows he imparted all he knew, and pointed out the route which the strangers took when they left—but which Lieut. Lovett and the detectives did not at once pursue, because they chose to consider his statement uncandid, and intended to put them upon a false scent. Indeed, so accurate was the description given by the accused to Lieut. Lovett, Tuesday, of the persons who had been at his

house, that the lieutenant says he was satisfied, from Mudd's description, they were Booth and Herold.

It was in great part by reason of Dr. Mudd's having delayed from Saturday night until Sunday noon to send to the authorities at Bryantown information as to the suspected persons who had been at his house, that he was arrested and charged as a conspirator; and yet I assert this record shows he moved more promptly in communicating his information than they did in acting on it. His message was communicated to Lieut. Dana Monday morning. Tuesday, Lieut. Lovett and the detectives came, and that officer got such information from Dr. Mudd as convinced him the suspected persons were Booth and Herold, and yet it was not until Col. Wells came, on Saturday, that an energetic effort was made to find the route of the assassin. On that day, Dr. Mudd himself went with that officer, and followed the tracks on the route indicated beyond the marsh into a piece of plowed ground, where the tracks were lost. But Col. Wells had got the general direction, and it was in consequence of the information sent by the accused to the authorities the day after Booth left his house, that he was tracked to the Potomac.

But the evidence does not show that Dr. Mudd delayed at all in communicating his information, for it does not show when his wife told him of the false whiskers of the crippled man. But, admit she told him on Saturday evening, as soon as the men left. It was four miles to Bryantown, and his wife may have feared to be left alone that night. Boyle, who haunted that neighborhood, was understood by Dr. Mudd to have been one of the assassins (Hardy), and may not his or his wife's fears of the vengeance of that desperado have prevented him communicating his suspicions direct and in person to the officer at Bryantown? He told Dr. George Mudd next day, when asking him to go to the authorities with the information, to caution them not to let it be publicly known that he had volunteered the statement, lest he might be assassinated in revenge for having done it.

Having thus presented and discussed somewhat in detail

the testimony in this case, I now ask the indulgence of the Court while I briefly review some of its leading features.

Booth and Mudd first met in November last at church, near Bryantown, casually, and, but for a few minutes. Their conversation was in presence of many others, including men of unquestioned loyalty. Next morning, Booth left Dr. Queen's, rode by Mudd's, talked of buying his farm, got him to show him over to Gardiner's, a quarter of a mile off, where he bought a horse, Mudd manifesting no interest in the purchase. They rode away together toward Mudd's house, and toward Bryantown, where Gardiner found Booth next morning at the village hotel. Booth was again at Dr. Queen's in the middle of December. But the evidence shows that he did not go into Mudd's neighborhood, or seek or see him. So far as we dare speak from the evidence—and we should dare speak from nothing else—that is all the intercourse between Mudd and Booth in that neighborhood before the assassination.

What was there in that to attract attention or excite remark toward Mudd more than to Dr. Queen or Mr. Gardiner, or any other gentleman in Charles county, to whom Booth had been introduced, and with whom he had conversed? All that is shown to have passed between them was perfectly natural and harmless, and nothing is to be presumed which was not shown. True, they might have talked of and plotted assassination; but did they? Is there, in the intercourse which had thus far occurred, any incident from which such a deduction could be drawn, or which would justify a suspicion that any such thing was thought of or hinted at? Nor did they ever meet again anywhere before the assassination, unless the testimony of Weichmann is to be accepted as true, which, upon this point, at least, is quite unworthy of credence. He swears to having met Dr. Mudd and Booth, in the city of Washington, about the middle of January—certainly after the holidays. But it is in proof by many witnesses, who can not be mistaken, have not been impeached, and who unquestionably stated the truth, that Dr. Mudd was from home but one night from the 23d of December to the 23d of March, and

that night at a party in his own neighborhood. If this be so, and there is no reason to doubt it, then Weichmann's statement can not be true. The mildest thing that can be said of him, as of Norton, is, that he was mistaken in the man. That which was attempted to be shown by this contradicted witness (Weichmann) was, that Dr. Mudd and Booth, who were almost strangers to each other, met Surratt, to whom Booth was unknown, at the National Hotel, and within half an hour after the meeting, plotted the assassination of the President, his Cabinet, the Vice-President and General Grant—all this in Washington, and in the presence of a man whom one of the supposed conspirators knew to be an employee of the War Department, and had reason to believe was a Government detective! It is monstrous to believe any such thing occurred. It outrages all that we have learned of the philosophy of human nature, all that we know of the motives and principle of human actions. And yet, if Mudd was not then and there inducted into the plot, he never was. He never saw Booth again until after the assassination, and never saw any of the other conspirators at all. Twice, then, and twice only—unless the Court shall accept the testimony of Weichmann against the clear proofs of an alibi, and then only three times—he and Booth had met. None of these meetings occurred later than the 15th of January. They are shown to have been accidental and brief. The parties had but little conversation, and portions of that little have been repeated to the Court. So far as it has been disclosed, it was as innocent as the prattle of children, and not a word was breathed that can be tortured into criminality—not a word or an act that betokens malign purposes. Against how many scores of loyal persons, even in this community, may stronger evidence be adduced than against Mudd, if the mere fact of meeting and conversing with Booth is to be accepted as evidence of guilt? Booth was a guest at the National Hotel—intelligent, agreeable, of attractive manner, with no known blemish on his character as a man or a citizen. He had the entree of the drawing room, and mingled freely with the throngs that assembled there.

His society, so far from being shunned, was courted; and the fairest ladies of the land, the daughters of distinguished statesmen and patriots deemed it no disparagement to them to accept his escort and attentions. It is not extravagant to say, that hundreds of true, Union-loving, loyal people in this and other cities, were on terms of cordial and intimate association with him. And why should they not have been? He was under no suspicion. They did not shun him. Why should Mudd? And why shall what was innocent in them be held as proof of guilt in him? Let it be remembered, in this connection, that Dr. Mudd's house was searched and his papers seized; that Surratt's house was seized and searched; that all the effects of Booth, Atzerodt, Arnold, Herold, Spangler, and Mrs. Surratt, that could be found, were seized and examined; and among them all not a letter, a note, a memorandum, not the scrape of a pen by any person or in any form, has been found implicating Dr. Mudd. Let it further be remembered, that all these persons have been subjected to repeated examinations, under appalling circumstances, by various officials of the Government, eager to catch the faintest intimation of Mudd's complicity, and that not one of them has mentioned or hinted at his name. Let it also be remembered, that anonymous letters have been picked up in railroad cars, found in pigeon-holes at hotels, rescued from the waves, and that the continent has been traversed and the ocean vexed in search of proofs of the conspiracy, its instigators, leaders, and abettors, and that in all this written and oral testimony there is not a word making the remotest allusion to Dr. Mudd. The probabilities are as a thousand to one that he never knew, or heard, or imagined, of a purpose, much less plotted in a conspiracy, either to capture or to assassinate the President. There is not only a failure to show his connection affirmatively, but, if the rules of law be reversed, and guilt be presumed until innocence be shown, then, I say, he has carried his proofs in negation of complicity to a point as near demonstration as it is possible for circumstantial evidence to reach. I once

more concede, that (if the Court accept Weichmann's statement) it is possible he may have talked treason and plotted assassination with Booth and Surratt, but it is indefinitely removed from the probable; and neither liberty nor life is to be forfeited upon either probabilities or possibilities. I cannot bring myself to fear that this Commission will sanction what, in my judgment, would be so shocking and indefensible a conclusion.

If he and Booth had, at the alleged meeting in January, confederated for the perpetration of one of the most stupendous and startling crimes in the annals of human depravity, who can doubt that frequent meetings and consultations would thereafter have occurred, and that they would have increased in frequency as the time for the consummation of the atrocious plot approached? Yet, though within six hours' ride of each other, they had no meetings, no consultations, no intercourse, no communication, no concert, but were in total ignorance of each other's movements and purposes. Mudd was here the 23d of March, but he was not here for the purpose of seeing Booth, nor did he see him. He made no inquiry for him; did not call at his hotel; saw none of his associates; did not speak of him; did not, so far as appears, even think of him. On the 11th of April, only three days before the frightful tragedy was enacted, Mudd was at Giesboro, in sight of Washington. Booth was then at the National Hotel; and if Mudd was leagued with him, that was the time of all others, from the conception to the consummation of the deed, when he would have seen and conferred with him. If Mudd was a conspirator, he knew of Booth's presence here then; yet he did not come to the city—did not inquire for Booth, see him, hold communication with him, learn whether he was in Washington or Boston, Nassau or London. Three days only before the frightful tragedy—three days before the world was astounded by its enactment! Imagine, if you can—if he was a conspirator—what a tumult of thought and emotion must have agitated him then—what doubts and misgivings—what faltering and

rallying of resolution—what invocations to “stop up the access and passage to remorse”—and then ask your own hearts and judgments if it is natural, or possible, that, at such a moment and under such circumstances, he could quietly have transacted the business that brought him to Geisboro, then turn his back upon Washington, indifferent to the failure or success of the events with which his own life, the happiness of his family, and all that was dear to him on earth, were bound up? If a conspirator, he knew what had been, and what was to be, done. He knew that the hour for the bloody business was at hand, and that everything depended upon the secrecy and success of its execution. Yet he was indifferent. He sought no interview with his supposed confederates—gave them no counsel or assistance—took no precautions for security—gave no signs of agitation or concern—but, in sight of the place and the agents selected for the enactment of the horrible deeds, turned his back upon them all, with an indifference that bordered upon idiocy, quietly trafficked at Geisboro, and returned to the seclusion of his family and his farm. You know, gentlemen, that this is impossible. You know that it could not have happened without outraging every law of human nature and human action. You know that at such an hour his soul would have been shaken with the maddest storm and tempest of passion, and that no mere business affair on earth could have seduced his thoughts for a moment from the savage slaughter he had in hand. It would have engrossed all his thoughts, and shaped all his actions. No one can, in the strong light of the evidence, believe he was a conspirator.

I then confidently conclude that Dr. Mudd cannot be convicted as a principal in the felony. He did not participate in its commission, and was more than thirty miles distant from the scene when it was committed. He cannot be convicted as an accessory before the fact, for the evidence fails to show that he had any knowledge or suspicion of an intention to commit it. If, then, he is to be held responsible at all, it is an accessory after the fact. Does the evidence impli-

cate him in that character? What is an accessory after the fact?

An accessory after the fact is when a person, knowing a felony to have been committed, receives, relieves, comforts, or assists him whom he knows to be the felon. He must know that the felon is guilty to make him an accessory. 1 Chitt. Crim. Law, 264.

Any assistance given to him to hinder his being apprehended, tried, or punished, is sufficient to convict the offender—as lending him a horse to escape his pursuers; but the assistance or support must be given in order to favor an illegal escape. 1 Chitt. Crim. Law, 265. If a man receives, harbors, or otherwise assists to elude justice, one whom he knows to be guilty of felony, he becomes thereby an accessory after the fact in the felony. 1 Bishop's Crim. Law, 487. Obviously, a man to be an accessory after the fact must be aware of the guilt of his principal; and, therefore, one can not become an accessory by helping to escape a prisoner convicted of felony, unless he has notice of the conviction, or at least of the felony committed. 1 Bishop's Crim. Law, 488. The charge against an accessory consists of two parts: First, of the felonious situation of the principal; and, secondly, of the guilty knowledge and conduct of the accessory. It will thus be seen that knowledge of the crime committed, and of the guilt of the principal who is aided, and aid and assistance after acquiring that knowledge, are all necessary to charge one as accessory after the fact.

Now let us apply the facts to the law, and see whether Dr. Mudd falls within the rule. On the morning after the assassination, about daybreak, Booth arrived at his house. He did not find the doctor on watch for him, as a guilty accomplice, expecting his arrival, would have been, but he and all his household were in profound sleep. Booth came with a broken leg, and his companion, Herold, reported that it had happened by the fall of his horse, and that they had come from Bryantown, and were going to Parson Wilmer's. The doctor rose from his bed, assisted Booth into the house, laid

him upon a sofa, took him upstairs to a bed, set the fractured bone, sent him a razor to shave himself, permitted him to remain there to sleep and rest, and had a pair of rude crutches improvised for his use. For all this he received the ordinary compensation for services rendered to strangers. He then went to his field to work. After dinner, while the day was still dark, and Booth still resting disguised in his chamber, Mudd left the house with Herold. Even though he had known of the assassination, and that his patient was the assassin, none of these acts of assistance would have made him an accessory after the fact. "If a person supply a felon with food, or other necessities for his sustenance, or professionally attend him sick or wounded, though he know him to be a felon, these acts will not be sufficient to make a party an accessory after the fact." Wharton's American Criminal Law, p. 73. But he did not know, and had no reason to suspect, that his patient was a fugitive murderer. The most zealous advocate would not venture to assert that the evidence warrants such conclusion; much less will it be assumed by one acting under the solemn responsibilities of judge. Down, then, to the time Mudd left home with Herold, after dinner, the evidence affords no pretext for asserting he was an accessory after the fact.

But if he was not then an accessory, he never was. It is shown that Herold turned back on the way to Bryantown, and when Mudd returned, he and Booth had gone. And the evidence does not show that he suspected them of having been guilty of any wrong, until his wife told him, after they had gone, that the whiskers of the crippled man fell off as he came down stairs to go. True, Booth was guilty, and Mudd had shown his companion the route to Wilmer's; which was the only thing done by Mudd, from first to last, that could have implicated him, even had he from the first known the crime and the criminal. But when he did that, he did not know either; for he did not know the crime until he went to Bryantown, nor have even the least suspicion of the criminal, until after Booth had gone. I have read you the

law—the scienter must be shown. Things not appearing and not existing stand before the law in the same category; and the guilty knowledge not appearing in evidence, in the eye of the law it does not exist. In this case it is not only not shown, but is negatived by the evidence. The conclusion most unfavorable to Mudd which the evidence can possibly justify is, that, having had his suspicions thoroughly aroused Saturday night, he delayed until Sunday noon to communicate them to the authorities. “If A knows B hath committed a felony, but doth not discover it, this doth not make A an accessory after the fact.” 1st Hale’s Pleas of the Crown, 618. “Merely suffering a felon to escape will not charge the party so doing—such amounting to a mere omission.” Whar. Am. Crim. Law, 73.

Can, then, Dr. Mudd be convicted as a conspirator, or an accessory before or after the fact, in the assassination? If this tribunal is to be governed in its findings by the just and time-honored rules of law, he cannot; if by some edict higher than constitutions and laws, I know not what to anticipate or how to defend him. With confidence in the integrity of purpose of the Court and its legal advisers, I now leave the case to them.

THE TRIAL OF THE CONSPIRATORS TO
ASSASSINATE PRESIDENT LINCOLN: THE
ARGUMENT OF JUDGE ADVOCATE
BINGHAM FOR THE GOVERN-
MENT. WASHINGTON,
D. C. 1865.

THE NARRATIVE.

On June 27th, Hon. John A. Bingham,^a spécial Judge Advocate in the prosecution of the Conspirators, began his argument before the Commission, in reply to the speeches of the several counsel for the eight accused persons. Before appointing the military tribunal, President Johnson had been advised by the Attorney General of the United States, James Speed,¹ that this course was proper and constitutional;² but on the trial several of the counsel for the prisoners made long arguments denying the right of a military court to sit in these cases and claiming that the prisoners should be tried by the regular criminal tribunals.

Mr. Bingham first took up the question of jurisdiction, devoting nearly one-half of his address to that issue. He main-

^a *Ante*, p. 35.

¹ SPEED, JAMES. (1812-1887.) Born Farmington, Ky. Admitted to bar and began practice of law in Louisville, 1853; member Kentucky House of Representatives, 1847; State Senator, 1861; Attorney General of the United States, 1864-1866; Professor Louisville Law School, 1872-1887.

² "My conclusion, therefore, is," said the Attorney General in concluding his opinion, "that if the persons who are charged with the assassination of the President committed the deed as public enemies, as I believe they did, and whether they did or not is a question to be decided by the tribunal before which they are tried, they not only can, but ought to be tried before a military tribunal. If the persons charged have offended against the laws of war, it would be as palpably wrong for the military to hand them over to the civil courts, as it would be wrong in a civil court to convict a man of murder who had, in time of war, killed another in battle. Pittman's Report of the Trial, p. 409; *ante*, p. 33.

tained that the people of the United States had through their representatives proclaimed martial law in the District of Columbia and that they had a constitutional right to do so. He said :

"I submit that it has been shown that, by the letter and spirit of the Constitution, as well as by its contemporaneous construction, followed and approved by every department of the Government, this right is in the people; that it is inseparable from the condition of war, whether civil or foreign, and absolutely essential to its vigorous and successful prosecution; that according to the highest authority upon Constitutional law, the proclamation and enforcement of martial law are 'usual under all Governments in time of rebellion;' that our own highest judicial tribunal has declared this, and solemnly ruled that the question of the necessity for its exercise rests exclusively with Congress and the President; and that the decision of the political departments of the Government, that there is an armed rebellion and a necessity for the employment of military force and martial law in its suppression, concludes the judiciary."³

He next reviewed the evidence given by the witnesses against each of the accused, demonstrating that it proved that each and all of them were at one time or another parties to the conspiracy. And he finally laid down the principle that all the members of a criminal conspiracy like this who perform any part, however minute or however remote it may be from the actual giving of the fatal blow are nevertheless just as responsible as the principal actor, for the act of one in the prosecution of the common design is the act of all.

"If this treasonable conspiracy has not been wholly executed; if the several executive officers of the United States and the commander of its armies, to kill and murder whom the said several accused thus confederated and conspired, have not each and all fallen by the hands of these conspirators, thereby leaving the people of the United States without a President or Vice-President, without a Secretary of State, who alone is clothed with authority by the law to call an election to fill the vacancy, should any arise, in the offices of President and Vice-President; and, without a lawful commander of the armies of the republic, it is only because the conspirators were deterred by the vigilance and fidelity of the executive officers, whose lives were mercifully protected, on that

³ Pittman's Report, p. 50; *ante*, p. 33.

night of murder, by the care of the Infinite Being, who has, thus far, saved the Republic, and crowned its arms with victory.

"If this conspiracy was thus entered into by the accused; if John Wilkes Booth did kill and murder Abraham Lincoln in pursuance thereof; if Lewis Payne did, in pursuance of said conspiracy, assault, with intent to kill and murder, William H. Seward, as stated, and if the several parties accused did commit the several acts alleged against them, in the prosecution of said conspiracy, then it is the law that all the parties to that conspiracy, whether present at the time of its execution or not, whether on trial before this Court or not, are alike guilty of the several acts done by each in the execution of the common design. What these conspirators did in the execution of this conspiracy by the hand of one of their co-conspirators they did themselves; his act, done in the prosecution of the common design, was the act of all the parties to the treasonable combination, because done in execution and furtherance of their guilty and treasonable agreement."⁴

THE TRIAL.⁵

Before a Military Commission, Washington, D. C., May, 1865.

Major General DAVID HUNTER,⁶ *President.*⁷

June 27 and 28.

THE JUDGE-ADVOCATE'S ARGUMENT.

Judge-Advocate *Bingham.*

May It Please the Court: The conspiracy here charged and specified, and the acts alleged to have been committed in pursuance thereof, and with the intent laid, constitute a

⁴ See *post*, p. 644.

⁵ *Bibliography.* *"Trial of the Conspirators for the Assassination of President Lincoln, etc. Argument of John A. Bingham, Special Judge Advocate in reply to the arguments of the several counsel for Mary E. Surratt, David E. Herold, Lewis Payne, George A. Atzerodt, Michael O'Laughlin, Samuel A. Mudd, Edward Spangler and Samuel Arnold, charged with Conspiracy and the Murder of Abraham Lincoln, late President of the United States. Delivered June 27 and 28, 1865, before the Military Commission, Washington, D. C. Washington: Government Printing Office. 1865."

Mr. Bingham's speech is likewise given in full in Pittman's Report of the Trial, *ante*, p. 33.

⁶ *Ante*, p. 34.

⁷ For the other members of the court, see *ante*, p. 33.

crime the atrocity of which has sent a shudder through the civilized world. All that was agreed upon and attempted by the alleged inciters and instigators of this crime constitutes a combination of atrocities with scarcely a parallel in the annals of the human race. Whether the prisoners at your bar are guilty of the conspiracy and the acts alleged to have been done in pursuance thereof, as set forth in the charge and specifications, is a question the determination of which rests solely with this honorable court, and in passing upon which this court are the sole judges of the law and the fact.

In presenting my views upon the questions of law raised by the several counsel for the defense, and also on the testimony adduced for and against the accused, I desire to be just to them, just to you, just to my country, and just to my own convictions. The issue joined involves the highest interests of the accused, and, in my judgment, the highest interests of the whole people of the United States.

It is a matter of great moment to all the people of this country that the prisoners at your bar be lawfully tried and lawfully convicted or acquitted. A wrongful and illegal conviction or a wrongful and illegal acquittal upon this dread issue would impair somewhat the security of every man's life, and shake the stability of the republic.

The crime charged and specified upon your record is not simply the crime of murdering a human being, but it is the crime of killing and murdering on the 14th day of April, A. D. 1865, within the military department of Washington and the intrenched lines thereof, Abraham Lincoln, then President of the United States, and commander-in-chief of the army and navy thereof; and then and there assaulting with intent to kill and murder, William H. Seward, then Secretary of State of the United States; and then and there lying in wait to kill and murder Andrew Johnson, then Vice President of the United States, and Ulysses S. Grant, then lieutenant general and in command of the armies of the United States, in pursuance of a treasonable conspiracy entered into by the accused with one John Wilkes Booth, and John H. Surratt, upon the instigation of Jefferson Davis,

Jacob Thompson and George N. Sanders and others, with intent thereby to aid the existing rebellion and subvert the Constitution and laws of the United States.

The rebellion, in aid of which this conspiracy was formed and this great public crime committed, was prosecuted for the vindication of no right, for the redress of no wrong, but was itself simply a criminal conspiracy and gigantic assassination. In resisting and crushing this rebellion the American people take no step backward, and cast no reproach upon their past history. That people now, as ever, proclaim the self-evident truth that whenever government becomes subversive of the ends of its creation, it is the right and duty of the people to alter or abolish it; but during these four years of conflict they have as clearly proclaimed, as was their right and duty, both by law and by arms, that the government of their own choice, humanely and wisely administered, oppressive of none and just to all, shall not be overthrown by privy conspiracy or armed rebellion.

What wrong had this government or any of its duly constituted agents done to any of the guilty actors in this atrocious rebellion? They themselves being witnesses, the government which they assailed had done no act, and attempted no act, injurious to them, or in any sense violative of their rights as citizens and men; and yet for four years, without cause of complaint or colorable excuse, the inciters and instigators of the conspiracy charged upon your record have, by armed rebellion, resisted the lawful authority of the government, and attempted by force of arms to blot the republic from the map of nations. Now that their battalions of treason are broken and flying before the victorious legions of the republic, the chief traitors in this great crime against your government secretly conspire with their hired confederates to achieve by assassination, if possible, what they have in vain attempted by wager of battle—the overthrow of the government of the United States and the subversion of its Constitution and laws. It is for this secret conspiracy in the interest of the rebellion, formed at the instigation of the chiefs in that rebellion, and in pursuance of which the acts

charged and specified are alleged to have been done and with the intent laid, that the accused are upon trial.

The government in preferring this charge does not indict the whole people of any State or section, but only the alleged parties to this unnatural and atrocious conspiracy and crime. The President of the United States, in the discharge of his duty as commander-in-chief of the army, and by virtue of the power vested in him by the Constitution and laws of the United States, has constituted you a military court, to hear and determine the issue joined against the accused, and has constituted you a court for no other purpose whatever. To this charge and specification the defendants have pleaded, first, that this court has no jurisdiction in the premises; and, second, not guilty.

THE QUESTION OF JURISDICTION.

As the court has already overruled the plea to the jurisdiction, it would be passed over in silence by me but for the fact, that a grave and elaborate argument has been made by counsel for the accused, not only to show the want of jurisdiction, but to arraign the President of the United States before the country and the world as a usurper of power over the lives and the liberties of the prisoners. Denying the authority of the President to constitute this commission is an averment that this tribunal is not a court of justice, has no legal existence, and therefore no power to hear and determine the issue joined. The learned counsel for the accused, when they make this averment by way of argument, owe it to themselves and to their country to show how the President could otherwise lawfully and efficiently discharge the duty enjoined upon him by his oath to protect, preserve and defend the Constitution of the United States, and to take care that the laws be faithfully executed.

An existing rebellion is alleged and not denied. It is charged that in aid of this existing rebellion a conspiracy was entered into by the accused, incited and instigated thereto by the chiefs of this rebellion, to kill and murder the executive officers of the government, and the commander of the armies

of the United States, and that this conspiracy was partly executed by the murder of Abraham Lincoln, and by a murderous assault upon the Secretary of State; and counsel reply, by elaborate argument, that although the facts be as charged, though the conspirators be numerous and at large, able and eager to complete the horrid work of assassination already begun within your military encampment, yet the successor of your murdered President is a usurper if he attempts by military force and martial law, as commander-in-chief, to prevent the consummation of this traitorous conspiracy in aid of this treasonable rebellion. The civil courts, say the counsel, are open in the District. I answer, they are closed throughout half the republic, and were only open in this District on the day of this confederation and conspiracy, on the day of the traitorous assassination of your President, and are only open at this hour, by force of the bayonet. Does any man suppose that if the military forces which garrison the intrenchments of your capital, fifty thousand strong, were all withdrawn, the rebel bands who this day infest the mountain passes in your vicinity would allow this court, or any court, to remain open in this District for the trial of these their confederates, or would permit your executive officers to discharge the trust committed to them, for twenty-four hours?

At the time this conspiracy was entered into, and when this court was convened and entered upon this trial, the country was in a state of civil war. An army of insurrectionists have, since this trial begun, shed the blood of Union soldiers in battle. The conspirator, by whose hand his co-conspirators, whether present or absent, jointly murdered the President on the 14th of last April, could not be and was not arrested upon civil process, but was pursued by the military power of the government, captured and slain. Was this an act of usurpation?—a violation of the right guaranteed to that fleeing assassin by the very Constitution against which and for the subversion of which he had conspired and murdered the President? Who in all this land is bold enough or base enough to assert it?

I would be glad to know by what law the President, by a

military force, acting only upon his military orders, is justified in pursuing, arresting, and killing one of these conspirators, and is condemned for arresting in like manner, and by his order subjecting to trial, according to the laws of war, any or all of the other parties to this same damnable conspiracy and crime, by a military tribunal of justice—a tribunal, I may be pardoned for saying, whose integrity and impartiality are above suspicion, and pass unchallenged even by the accused themselves.

The argument against the jurisdiction of this court rests upon the assumption that even in time of insurrection and civil war, no crimes are cognizable and punishable by military commission or court-martial, save crimes committed in the military or naval service of the United States, or in the militia of the several States when called into the actual service of the United States. But that is not all the argument: it affirms that under this plea to the jurisdiction, the accused have the right to demand that this court shall decide that it is not a judicial tribunal and has no legal existence.

This is a most extraordinary proposition—that the President, under the Constitution and laws of the United States, was not only authorized but absolutely forbidden to constitute this court for the trial of the accused, and, therefore, the act of the President is void, and the gentlemen who compose the tribunal without judicial authority or power, and are not in fact or in law a court.

That I do not misstate what is claimed and attempted to be established on behalf of the accused, I ask the attention of the court to the following as the gentleman's (Mr. Johnson's) propositions:

That Congress has not authorized, and, under the Constitution, cannot authorize the appointment of this commission.

That this commission has, "as a court, no legal existence or authority," because the President, who alone appointed the commission, has no such power.

That his act "is a mere nullity—the usurpation of a power not vested in the Executive, and conferring no authority upon you."

We have had no common exhibition of law learning in this defense, prepared by a Senator of the United States; but with all his experience, and all his learning, and acknowledged ability, he has failed, utterly failed, to show how a tribunal constituted and sworn, as this has been, to duly try and determine the charge and specification against the accused, and by its commission not authorized to hear or determine any other issues whatever, can rightfully entertain, or can by any possibility pass upon, the proposition presented by this argument of the gentleman for its consideration.

The members of this court are officers in the army of the United States, and by order of the President, as Commander-in-Chief, are required to discharge this duty, and are authorized in this capacity to discharge no other duty, to exercise no other judicial power. Of course, if the commission of the President constitutes this a court for the trial of this case only, as such court it is competent to decide all questions of law and fact arising in the trial of the case. But this court has no power, as a court, to declare the authority by which it was constituted null and void, and the act of the President a mere nullity, a usurpation. Has it been shown by the learned gentleman, who demands that this court shall so decide, that officers of the army may lawfully and constitutionally question in this manner the orders of their Commander-in-Chief, disobey, set them aside, and declare them a nullity and a usurpation? Even if it be conceded that the officers thus detailed by order of the Commander-in-Chief may question and utterly disregard his order and set aside his authority, is it possible, in the nature of things, that any body of men, constituted and qualified as a tribunal of justice, can sit in judgment upon the proposition that they are not a court for any purpose, and finally decide judicially, as a court, that the government which appointed them was without authority? Why not crown the absurdity of this proposition by asking the several members of this court to determine that they are not men—living, intelligent, responsible men! This would be no more irrational than the question upon which they are asked to pass. How can any sensible man entertain it? Be-

fore he begins to reason upon the proposition he must take for granted, and therefore decide in advance, the very question in dispute, to wit, his actual existence.

So with the question presented in this remarkable argument for the defense: before this court can enter upon the inquiry of the want of authority in the President to constitute them a court, they must take for granted and decide the very point in issue, that the President had the authority, and that they are in law and in fact a judicial tribunal; and having assumed this, they are gravely asked, as such judicial tribunal, to finally and solemnly decide and declare that they are not in fact or in law a judicial tribunal, but a mere nullity and nonentity. A most lame and impotent conclusion!

As the learned counsel seems to have great reverence for judicial authority, and requires precedent for every opinion, I may be pardoned for saying that the objection which I urge, against the possibility of any judicial tribunal, after being officially qualified as such, entertaining, much less judicially deciding, the proposition that it has no legal existence as a court, and that the appointment was a usurpation and without authority of law, has been solemnly ruled by the Supreme Court of the United States.

That court say: "The acceptance of the judicial office is a recognition of the authority from which it is derived. If a court should enter upon the inquiry (whether the authority of the government which established it existed), and should come to the conclusion that the government under which it acted had been put aside, it would cease to be a court and be incapable of pronouncing a judicial decision upon the question it undertook to try. If it decides at all, as a court, it necessarily affirms the existence and authority of the government under which it is exercising judicial power." *Luther v. Borden*, 7 How. 40.

That is the very question raised by the learned gentleman in his argument—that there was no authority in the President, by whose act alone this tribunal was constituted, to vest it with judicial power to try this issue; and by the

order upon your record, as has already been shown, if you have no power to try this issue for want of authority in the Commander-in-Chief to constitute you a court, you are no court, and have no power to try any issue, because his order limits you to this issue, and this alone.

It requires no very profound legal attainments to apply the ruling of the highest judicial tribunal of this country, just cited, to the point raised, not by the pleadings, but by the argument. This court exists as a judicial tribunal by authority only of the President of the United States; the acceptance of the office is an acknowledgment of the validity of the authority conferring it, and if the President had no authority to order, direct, and constitute this court to try the accused, and, as is claimed, did, in so constituting it, perform an unconstitutional and illegal act, it necessarily results that the order of the President is void and of no effect; that the order did not and could not constitute this a tribunal of justice, and therefore its members are incapable of pronouncing a judicial decision upon the question presented.

There is a marked distinction between the question here presented and that raised by a plea to the jurisdiction of a tribunal whose existence as a court is neither questioned nor denied. Here it is argued, through many pages, by a learned Senator, and a distinguished lawyer, that the order of the President, by whose authority alone this court is constituted a tribunal of military justice, is unlawful; if unlawful it is void and of no effect, and has created no court; therefore this body, not being a court, can have no more power as a court to decide any question whatever than have its individual members power to decide that they as men do not in fact exist.

It is a maxim of the common law—the perfection of human reason—that what is impossible the law requires of no man.

How can it be possible that a judicial tribunal can decide the question that it does not exist, any more than that a rational man can decide that he does not exist?

The absurdity of the proposition so elaborately urged upon the consideration of this court cannot be saved from the ridicule and contempt of sensible men by the pretence that the court is not asked judicially to decide that it is not a court, but only that it has no jurisdiction; for it is a fact not to be denied that the whole argument for the defence on this point is that the President has not the lawful authority to issue the order by which alone this court is constituted, and that the order for its creation is null and void.

Gentlemen might as well ask the Supreme Court of the United States upon a plea to the jurisdiction to decide, as a court, that the President had no lawful authority to nominate the judges thereof severally to the Senate, and that the Senate had no lawful authority to advise and consent to their appointment, as to ask this court to decide, as a court, that the order of the President of the United States constituting it a tribunal for the sole purpose of this trial was not only without authority of law, but against and in violation of law. If this court is not a lawful tribunal, it has no existence, and can no more speak as a court than the dead, much less pronounce the judgment required at its hands—that it is not a court, and that the President of the United States, in constituting it such to try the question upon the charge and specification preferred, has transcended his authority, and violated his oath of office.

Before passing from the consideration of the proposition of the learned senator, that this is not a court, it is fit that I should notice that another of the counsel for the accused (Mr. Ewing) has also advanced the same opinion, certainly with more directness and candor, and without any qualification. His statement is, “You,” gentlemen, “are no court under the Constitution.” This remark of the gentleman cannot fail to excite surprise, when it is remembered that the gentleman, not many months since, was a general in the service of the country, and as such in his department in the west proclaimed and enforced martial law by the constitution of military tribunals for the trial of citizens not in the

land or naval forces, but who were guilty of military offenses, for which he deemed them justly punishable before military courts, and accordingly he punished them. Is the gentleman quite sure, when that account comes to be rendered for these alleged unconstitutional assumptions of power, that he will not have to answer for more of these alleged violations of the rights of citizens by illegal arrests, convictions, and executions, than any of the members of this court? In support of his opinion that this is no court, the gentleman cites the 3d article of the Constitution, which provides "that the judicial power of the United States shall be vested in one supreme court, and such inferior courts as Congress may establish," the judges whereof "shall hold their offices during good behavior."

It is a sufficient answer to say to the gentleman, that the power of this government to try and punish military offenses by military tribunals is no part of the "judicial power of the United States," under the 3d article of the Constitution, but a power conferred by the 8th section of the 1st article, and so it has been ruled by the Supreme Court in *Dyres v. Hoover*, 20 How. 78. If this power is so conferred by the 8th section, a military court authorized by Congress, and constituted as this has been, to try all persons for military crimes in time of war, though not exercising "the judicial power" provided for in the 3d article, is nevertheless a court as constitutional as the Supreme Court itself. The gentleman admits this to the extent of the trial by courts-martial of persons in the military or naval service, and by admitting it he gives up the point. There is no express grant for any such tribunal, and the power to establish such a court, therefore, is implied from the provisions of the 8th section, 1st article, that "Congress shall have power to provide and maintain a navy," and also "to make rules for the government of the land and naval forces." From these grants the Supreme Court infer the power to establish courts-martial, and from the grants in the same 8th section, as I shall notice hereafter, that "Congress shall have power

to declare war," and "to pass all laws necessary and proper to carry this and other powers into effect," it is necessarily implied that in time of war Congress may authorize military commissions, to try all crimes committed in aid of the public enemy, as such tribunals are necessary to give effect to the power to make war and suppress insurrection.

Inasmuch as the gentleman (Gen. Ewing), for whom, personally, I have a high regard as the military commander of a western department, made a liberal exercise, under the order of the Commander-in-Chief of the army, of this power to arrest and try military offenders not in the land or naval forces of the United States, and inflicted upon them, as I am informed, the extreme penalty of the law, by virtue of his military jurisdiction, I wish to know whether he proposes, by his proclamation of the personal responsibility awaiting all such usurpations of judicial authority, that he himself shall be subjected to the same stern judgment which he invokes against others—that, in short, he shall be drawn and quartered for inflicting the extreme penalties of the law upon citizens of the United States in violation of the Constitution and laws of his country? I trust that his error of judgment in pronouncing this military jurisdiction a usurpation and violation of the Constitution may not rise up in judgment to condemn him, and that he may never be subjected to pains and penalties for having done his duty heretofore in exercising this rightful authority, and in bringing to judgment those who conspired against the lives and liberties of the people.

Here I might leave this question, committing it to the charitable speeches of men, but for the fact that the learned counsel has been more careful in his extraordinary argument to denounce the President as a usurper than to show how the court could possibly decide that it has no judicial existence, and yet that it has judicial existence.

A representative of the people and of the rights of the people before this court, by the appointment of the President, and which appointment was neither sought by me nor

desired, I cannot allow all that has here been said by way of denunciation of the murdered President and his successor to pass unnoticed. This has been made the occasion by the learned counsel, Mr. Johnson, to volunteer, not to defend the accused, Mary E. Surratt, not to make a judicial argument in her behalf, but to make a political harangue, a partisan speech against his government and country, and thereby swell the cry of the armed legions of sedition and rebellion that but yesterday shook the heavens with their infernal enginery of treason and filled the habitations of the people with death. As the law forbids a senator of the United States to receive compensation, or fee, for defending, in cases before civil or military commissions, the gentleman volunteers to make a speech before this court, in which he denounces the action of the Executive Department in proclaiming and executing martial law against rebels in arms, their aiders and abettors, as a usurpation and a tyranny. I deem it my duty to reply to this denunciation, not for the purpose of presenting thereby any question for the decision of this court, for I have shown that the argument of the gentleman presents no question for its decision as a court, but to repel, as far as I may be able, the unjust aspersion attempted to be cast upon the memory of our dead President, and upon the official conduct of his successor.

I propose now to answer fully all that the gentleman (Mr. Johnson) has said of the want of jurisdiction in this court, and of the alleged usurpation and tyranny of the Executive, that the enlightened public opinion to which he appeals may decide whether all this denunciation is just—whether indeed conspiring against the whole people, and confederation and agreement in aid of insurrection to murder all the executive officers of the government, cannot be checked or arrested by the Executive power. Let the people decide this question; and in doing so, let them pass upon the action of the senator as well as upon the action of those whom he so arrogantly arraigns. His plea in behalf of an expiring and shattered rebellion is a fit subject for public consideration and for public condemnation.

Let that people also note, that while the learned gentleman (Mr. Johnson), as a volunteer, without pay, thus condemns as a usurpation the means employed so effectually to suppress the gigantic insurrection, the *New York News*, whose proprietor, Benjamin Wood, is shown by the testimony upon your record to have received from the agents of the rebellion twenty-five thousand dollars, rushes into the lists to champion the cause of the rebellion, its aiders and abettors, by following to the letter his colleague (Mr. Johnson), and with greater plainness of speech, and a fervor intensified, doubtless, by the twenty-five thousand dollars received, and the hope of more, denounces the court as a usurpation and threatens the members with the consequences!

The argument of the gentleman to which the court has listened so patiently and so long is but an attempt to show that it is unconstitutional for the government of the United States to arrest upon military order and try before military tribunals and punish upon conviction, in accordance with the laws of war and the usage of nations, all criminal offenders acting in aid of the existing rebellion. It does seem to me that the speech in its tone and temper is the same as that which the country has heard for the last four years uttered by the armed rebels themselves and by their apologists, averring that it was unconstitutional for the government of the United States to defend by arms its own rightful authority and the supremacy of its laws.

It is as clearly the right of the republic to live and to defend its life until it forfeits that right by crime, as it is the right of the individual to live so long as God gives him life, unless he forfeits that right by crime. I make no argument to support this proposition. Who is there here or elsewhere to cast the reproach upon my country that for her crimes she must die? Youngest born of the nations! is she not immortal by all the dread memories of the past—by that sublime and voluntary sacrifice of the present, in which the bravest and noblest of her sons have laid down their lives that she might live, giving their serene brows to the dust of the grave, and

lifting their hands for the last time amidst the consuming fires of battle! I assume, for the purpose of this argument, that self-defense is as clearly the right of nations as it is the acknowledged right of men, and that the American people may do in the defense and maintenance of their own rightful authority against organized armed rebels, their aiders and abettors, whatever free and independent nations anywhere upon this globe, in time of war, may of right do.

All this is substantially denied by the gentleman in the remarkable argument which he has here made. There is nothing further from my purpose than to do injustice to the learned gentleman or to his elaborate and ingenious argument. To justify what I have already said, I may be permitted here to remind the court that nothing is said by the counsel touching the conduct of the accused, Mary E. Surratt, as shown by the testimony; that he makes confession at the end of his arraignment of the government and country, that he has not made such argument, and that he leaves it to be made by her other counsel. He does take care, however, to arraign the country and the government for conducting a trial with closed doors and before a secret tribunal, and compares the proceedings of this court to the Spanish Inquisition, using the strongest words at his command to intensify the horror which he supposes his announcement will excite throughout the civilized world.

Was this dealing fairly by this government? Was there anything in the conduct of the proceedings here that justified any such remark? Has this been a secret trial? Has it not been conducted in open day in the presence of the accused, and in the presence of seven gentlemen learned in the law, who appeared from day to day as their counsel? Were they not informed of the accusation against them? Were they deprived of the right of challenge? Was it not secured to them by law, and were they not asked to exercise it? Has any part of the evidence been suppressed? Have not all the proceedings been published to the world? What, then, was

done, or intended to be done, by the government, which justifies this clamor about a Spanish Inquisition?

That a people assailed by organized treason over an extent of territory half as large as the continent of Europe, and assailed in their very capital by secret assassins banded together and hired to do the work of murder by the instigation of these conspirators, may not be permitted to make inquiry, even with closed doors, touching the nature and extent of the organization, ought not to be asserted by any gentleman who makes the least pretensions to any knowledge of the law, either common, civil, or military. Who does not know that at the common law all inquisition touching crimes and misdemeanors, preparatory to indictment by the grand inquest of the state, is made with closed doors?

In this trial no parties accused, nor their counsel, nor the reporters of this court, were at any time excluded from its deliberations when any testimony was being taken; nor has there been any testimony taken in the case with closed doors, save that of a few witnesses, who testified, not in regard to the accused or either of them, but in respect to the traitors and conspirators not on trial, who were alleged to have incited this crime. Who is there to say that the American people, in time of armed rebellion and civil war, have not the right to make such an examination as secretly as they may deem necessary, either in a military or civil court?

I have said this, not by way of apology for anything the government has done or attempted to do in the progress of this trial, but to expose the animus of the argument, and to repel the accusation against my country sent out to the world by the counsel. From anything that he has said, I have yet to learn that the American people have not the right to make their inquiries secretly, touching a general conspiracy in aid of an existing rebellion, which involves their nationality and the peace and security of all.

The gentleman then enters into a learned argument for the purpose of showing that, by the Constitution, the people of the United States cannot, in war or in peace, subject

any person to trial before a military tribunal, whatever may be his crime or offense, unless such person be in the military or naval service of the United States. The conduct of this argument is as remarkable as its assaults upon the government are unwarranted, and its insinuations about the revival of the Inquisition and secret trials are inexcusable. The court will notice that the argument, from the beginning almost to its conclusion, insists that no person is liable to be tried by military or martial law before a military tribunal, save those in the land and naval service of the United States. I repeat, the conduct of this argument of the gentleman is remarkable. As an instance, I ask the attention, not only of this court, but of that public whom he has ventured to address in this tone and temper, to the authority of the distinguished Chancellor Kent, whose great name the counsel has endeavored to press into his service in support of his general proposition, that no person save those in the military or naval service of the United States is liable to be tried for any crime whatever, either in peace or in war, before a military tribunal.

The language of the gentleman, after citing the provision of the Constitution, "that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger," is, "that this exception is designed to leave in force, not to enlarge, the power vested in Congress by the original Constitution to make rules for the government and regulation of the land and naval forces; that the land or naval forces are the terms used in both, have the same meaning, and until lately have been supposed by every commentator and judge to exclude from military jurisdiction offenses committed by citizens not belonging to such forces." The learned gentleman then adds: "Kent, in a note to his 1st Commentaries, 341, states, and with accuracy, that 'military and naval crimes and offenses, committed while the party is attached to and under

the immediate authority of the army and navy of the United States, and in actual service, are not cognizable under the common-law jurisdiction of the courts of the United States.' " I ask this court to bear in mind that this is the only passage which he quotes from this note of Kent in his argument, and that no man possessed of common sense, however destitute he may be of the exact and varied learning in the law to which the gentleman may rightfully lay claim, can for a moment entertain the opinion that the distinguished chancellor of New York, in the passage just cited, intimates any such thing as the counsel asserts, that the Constitution excludes from military jurisdiction offenses committed by citizens not belonging to the land or naval forces.

Who can fail to see that Chancellor Kent, by the passage cited, only decides that military and naval crimes and offenses committed by a party attached to and under the immediate authority of the army and navy of the United States, and in actual service, are not cognizable under the common-law jurisdiction of the courts of the United States? He only says they are not cognizable under its common-law jurisdiction; but by that he does not say or intimate, what is attempted to be said by the counsel for him, that "all crimes committed by citizens are by the Constitution excluded from military jurisdiction," and that the perpetrators of them can under no circumstances be tried before military tribunals. Yet the counsel ventures to proceed, standing upon this passage quoted from Kent, to say that, "according to this great authority, every other class of persons and every other species of offenses are within the jurisdiction of the civil courts, and entitled to the protection of the proceeding by presentment or indictment and the public trial in such a court."

Whatever that great authority may have said elsewhere, it is very doubtful whether any candid man in America will be able to come to the very learned and astute conclusion that Chancellor Kent has so stated in the note or any part of the

note which the gentleman has just cited. If he has said it elsewhere, it is for the gentleman, if he relies upon Kent for authority, to produce the passage. But was it fair treatment of this "great authority"—was it not taking an unwarrantable privilege with the distinguished chancellor and his great work, the enduring monument of his learning and genius, to so mutilate the note referred to, as might leave the gentleman at liberty to make his deductions and assertions under cover of the great name of the New York chancellor, to suit the emergency of his case, by omitting the following passage, which occurs in the same note, and absolutely excludes the conclusion so defiantly put forth by the counsel to support his argument? In that note Chancellor Kent says:

"Military law is a system of regulations for the government of the armies in the service of the United States, authorized by the act of Congress of April 10, 1806, known as the Articles of War, and naval law is a similar system for the government of the navy, under the act of Congress of April 23, 1800. But martial law is quite a distinct thing, and is founded upon paramount necessity, and proclaimed by a military chief."

However unsuccessful, after this exposure, the gentleman appears in maintaining his monstrous proposition, that the American people are by their own Constitution forbidden to try the aiders and abettors of armed traitors and rebellion before military tribunals, and subject them, according to the laws of war and the usages of nations, to just punishment for their great crimes, it has been made clear from what I have already stated that he has been eminently successful in mutilating this beautiful production of that great mind; which act of mutilation every one knows is violative alike of the laws of peace and war. Even in war the divine creations of art and the immortal productions of genius and learning are spared.

In the same spirit, and it seems to me with the same unfairness as that just noted, the learned gentleman has very adroitly pressed into his service, by an extract from the autobiography of the war-worn veteran and hero, General Scott, the names of the late Secretary of War, Mr. Marcy, and the

learned ex-Attorney General, Mr. Cushing. This adroit performance is achieved in this way: After stating the fact that General Scott in Mexico proclaimed martial law for the trial and punishment by military tribunals of persons guilty of "assassination, murder and poisoning," the gentleman proceeds to quote from the autobiography, "that this order, when handed to the then Secretary of War (Mr. Marcy) for his approval, 'a startle at the title (martial law order) was the only comment he then or ever made on the subject,' and that it was 'soon silently returned as too explosive for safe handling.' 'A little later (he adds) the Attorney General (Mr. Cushing) called and asked for a copy, and the law officer of the government, whose business it is to speak on all such matters, was stricken with legal dumbness.' " There-upon the learned gentleman proceeds to say: "How much more startled and more paralyzed would these great men have been had they been consulted on such a commission as this! A commission, not to sit in another country, and to try offenses not provided for in any law of the United States, civil or military, then in force, but in their own country, and in a part of it where there are laws providing for their trial and punishment, and civil courts clothed with ample powers for both, and in the daily and undisturbed exercise of their jurisdiction."

I think I may safely say, without stopping to make any special references, that the official career of the late Secretary of War (Mr. Marcy) gave no indication that he ever doubted or denied the constitutional power of the American people, acting through their duly constituted agents, to do any act justified by the laws of war, for the suppression of a rebellion or to repel invasion. Certainly there is nothing in this extract from the autobiography which justifies any such conclusion. He was startled, we are told. It may have been as much the admiration he had for the boldness and wisdom of the conqueror of Mexico as any abhorrence he had for the trial and punishment of "assassins, poisoners, and murderers," according to the laws and usages of war.

But the official utterances of the ex-Attorney General, Cushing, with which the gentleman doubtless was familiar when he prepared this argument, by no means justify the attempt here made to quote him as authority against the proclamation and enforcement of martial law in time of rebellion and civil war. That distinguished man, not second in legal attainments to any who have held that position, has left an official opinion of record touching this subject. Referring to what is said by Sir Mathew Hale, in his History of the Common Law, concerning martial law, wherein he limits it, as the gentleman has seemed by the whole drift of his argument desirous of doing, and says that it is "not in truth and in reality law, but something indulged rather than allowed as a law—the necessity of government, order and discipline in an army," Mr. Cushing makes this just criticism:

"This proposition is a mere composite blunder, a total misapprehension of the matter. It confounds martial law and law military; it ascribes to the former the uses of the latter; it erroneously assumes that the government of a body of troops is a necessity more than of a body of civilians or citizens. It confounds and confuses all the relations of the subject, and is an apt illustration of the incompleteness of the notions of the common-law jurists of England in regard to matters not comprehended in that limited branch of legal science. . . . Military law, it is now perfectly understood in England, is a branch of the law of the land, applicable only to certain acts of a particular class of persons and administered by special tribunals; but neither in that nor in any other respect essentially differing as to foundation in constitutional reason from admiralty, ecclesiastical, or indeed chancery and common law. . . . It is the system of rules for the government of the army and navy established by successive acts of Parliament. . . . Martial law, as exercised in any country by the commander of a foreign army, is an element of the *jus belli*.

"It is incidental to the state of solemn war, and appertains to the law of nations. . . . Thus, while the armies of the United States occupied different provinces of the Mexican republic, the respective commanders were not limited in authority by any local law. They allowed, or rather required, the magistrates of the country, municipal or judicial, to continue to administer the laws of the country among their countrymen; but in subjection, always, to the military power, which acted summarily and according to discretion, when the belligerent interests of the conqueror required it, and which exercised jurisdiction, either summarily or by means

of military commissions for the protection or the punishment of citizens of the United States in Mexico."—*Opinions of Attorneys General*, vol viii, 366-369.

Mr. Cushing says, "That, it would seem, was one of the forms of martial law;" but he adds, that such an example of martial law administered by a foreign army in the enemy's country does not enlighten us in regard to the question of martial law in one's own country, and as administered by its military commanders. That is a case which the law of nations does not reach. Its regulation is of the domestic resort of the organic laws of the country itself, and regarding which, as it happens, there is no definite or explicit legislation in the United States, as there is none in England.

"Accordingly, in England, as we have seen, Earl Grey assumes that when martial law exists it has no legal origin, but is a mere fact of necessity, to be legalized afterwards by a bill of indemnity, if there be occasion. I am not prepared to say that, under existing laws, such may not also be the case in the United States."—*Ibid.*, 370.

After such a statement, wherein ex-Attorney General Cushing very clearly recognizes the right of this government, as also of England, to employ martial law as a means of defense in a time of war, whether domestic or foreign, he will be as much surprised when he reads the argument of the learned gentleman, wherein he is described as being struck with legal dumbness at the mere mention of proclaiming martial law, and its enforcement by the commander of our army in Mexico, as the late Secretary of War was startled with even the mention of its title.

Even some of the reasons given, and certainly the power exercised by the veteran hero himself, would seem to be in direct conflict with the propositions of the learned gentleman.

The Lieutenant General says he "excludes from his order cases already cognizable by court-martial, and limits it to cases not provided for in the act of Congress establishing rules and articles for the government of the armies of the United States." Has not the gentleman who attempts to

press General Scott into his service argued and insisted upon it, that the commander of the army cannot subject the soldiers under his command to any control or punishment whatever, save that which is provided for in the articles?

It will not do, in order to sustain the gentleman's hypothesis, to say that these provisions of the Constitution, by which he attempts to fetter the power of the people to punish such offenses in time of war within the territory of the United States, may be disregarded by an officer of the United States in command of its armies, in the trial and punishment of its soldiers in a foreign war. The law of the United States for the government of its own armies follows the flag upon every sea and in every land.

The truth is, that the right of the people to proclaim and execute martial law is a necessary incident of war, and this was the right exercised, and rightfully exercised, by Lieutenant General Scott in Mexico. It was what Earl Grey has justly said was a "fact of necessity," and I may add, an act as clearly authorized as was the act of fighting the enemy when they appeared before him.

In making this exception, the Lieutenant General followed the rule recognized by the American authorities on military law, in which it is declared that "many crimes committed even by military officers, enlisted men, or camp retainers, cannot be tried under the rules and articles of war. Military commissions must be resorted to for such cases, and these commissions should be ordered by the same authority, be constituted in a similar manner, and their proceedings be conducted according to the same general rules as general courts-martial."—Benet, 15.

There remain for me to notice, at present, two other points in this extraordinary speech: First, that martial law does not warrant a military commission for the trial of military offenses—that is, offenses committed in time of war in the interests of the public enemy, and by concert and agreement with the enemy; and second, that martial law does not prevail in the United States, and has never been declared by any competent authority.

It is not necessary, as the gentleman himself has declined to argue the first point—whether martial law authorizes the organization of military commissions by order of the Commander-in-Chief to try such offenses, that I should say more than that the authority just cited by me shows that such commissions are authorized under martial law, and are created by the commander for the trial of all such offenses, when their punishment by court-martial is not provided for by the express statute law of the country.

The second point—that martial law has not been declared by any competent authority, is an arraignment of the late murdered President of the United States for his proclamation of September 24, 1862, declaring martial law throughout the United States; and of which, in Lawrence's edition of Wheaton on International Law, p. 522, it is said:

“Whatever may be the inference to be deduced either from constitutional or international law, or from the usages of European governments, as to the legitimate depository of the power of suspending the writ of *habeas corpus*, the virtual abrogation of the judiciary in cases affecting individual liberty, and the establishment as matter of fact in the United States, by the Executive alone, of martial law, not merely in the insurrectionary districts, or in cases of military occupancy, but throughout the entire Union, and not temporarily, but as an institution as permanent as the insurrection on which it professes to be based, and capable on the same principle of being revived in all cases of foreign as well as civil war, are placed beyond question by the President's proclamation of September 24, 1862.”

That proclamation is as follows:

“BY THE PRESIDENT OF THE UNITED STATES OF
AMERICA.

“A PROCLAMATION.

“Whereas it has become necessary to call into service not only volunteers, but also portions of the militia of the States, by a draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, and from giving aid and comfort in various ways to the insurrection: Now, therefore, be it ordered, that during the existing insurrection, and as a necessary means for suppressing the same, all rebels and insurgents,

their aiders and abettors, within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice, affording aid and comfort to rebels, against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.

"Second. That the writ of *habeas corpus* is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prison, or other place of confinement, by any military authority, or by the sentence of any court-martial or military commission.

"In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

"Done at the city of Washington, this 24th day of September, A. D. 1862, and of the independence of the United States, the eighty-seventh.

"Abraham Lincoln.

"By the President:

"William H. Seward,
"Secretary of State."

This proclamation is duly certified from the War Department to be in full force and not revoked, and is evidence of record in this case; and but a few days since a proclamation of the President, of which this court will take notice, declares that the same remains in full force.

It has been said by another of the counsel for the accused (Mr. Stone) in his argument, that, admitting its validity, the proclamation ceases to have effect with the insurrection, and is terminated by it. It is true the proclamation of martial law only continues during the insurrection; but inasmuch as the question of the existence of an insurrection is a political question, the decision of which belongs exclusively to the political department of the government, that department alone can declare its existence, and that department alone can declare its termination, and by the action of the political department of the government every judicial tribunal in the land is concluded and bound. That question has been settled for fifty years in this country by the Supreme Court of the United States: First, in the case of *Brown v. The United States* (8 Cranch); also in the *Prize Cases* (2 Black 641). Nothing more, therefore, need

be said upon this question of an existing insurrection than this: The political department of the government has heretofore proclaimed an insurrection, that department has not yet declared the insurrection ended, and the event on the 14th of April, which robbed the people of their chosen Executive, and clothed this land in mourning, bore sad but overwhelming witness to the fact that the rebellion is not ended. The fact of the insurrection is not an open question to be tried or settled by parol, either in a military tribunal or in a civil court.

The declaration of the learned gentleman who opened the defense (Mr. Johnson), that martial law has never been declared by any competent authority, as I have already said, arraigns Mr. Lincoln for a usurpation of power. Does the gentleman mean to say that, until Congress authorizes it, the President cannot proclaim and enforce martial law in the suppression of armed and organized rebellion? Or does he only affirm that this act of the late President is a usurpation?

The proclamation of martial law in 1862 a usurpation! Though it armed the people in that dark hour of trial with the means of defense against traitorous and secret enemies in every State and district of the country; though by its use some of the guilty were brought to swift and just judgment, and others deterred from crime or driven to flight; though by this means the innocent and defenseless were protected; though by this means the city of the gentleman's residence was saved from the violence and pillage of the mob and the torch of the incendiary. But, says the gentleman, it was a usurpation, forbidden by the laws of the land!

The same was said of the proclamations of blockade issued April 19 and 27, 1861, which declared a blockade of the ports of the insurgent States, and that all vessels violating the same were subjects of capture, and, together with the cargo, to be condemned as prize. Inasmuch as Congress had not then recognized the fact of civil war, these proclamations were denounced as void. The Supreme Court decided otherwise, and affirmed the power of the Executive thus to subject prop-

erty on the seas to seizure and condemnation. I read from that decision:

"The Constitution confers upon the President the whole executive power; he is bound to take care that the laws be faithfully executed; he is commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States. . . . Whether the President, in fulfilling his duties as commander-in-chief in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided by him, and this court must be governed by the decisions and acts of the political department of the government to which this power was intrusted. He must determine what degree of force the crisis demands.

"The proclamation of blockade is itself official and conclusive evidence to the court that a state of war existed which demanded and authorized a recourse to such a measure under the circumstances peculiar to the case." (2 Black, 670.)

It has been solemnly ruled by the same tribunal, in an earlier case, "that the power is confided to the Executive of the Union to determine when it is necessary to call out the militia of the States to repel invasion," as follows: "That he is necessarily constituted the judge of the existence of the exigency in the first instance, and is bound to act according to his belief of the facts. If he does so act, and decides to call forth the militia, his orders for this purpose are in strict conformity with the provisions of the law; and it would seem to follow as a necessary consequence, that every act done by a subordinate officer, in obedience to such orders, is equally justifiable. The law contemplates that, under such circumstances, orders shall be given to carry the power into effect; and it cannot therefore be a correct inference that any other person has a just right to disobey them. The law does not provide for any appeal from the judgment of the President, or for any right in subordinate officers to review his decision, and in effect defeat it. Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes him the sole and exclusive judge of the existence of those facts." (12 Wheat. 31.)

In the light of these decisions, it must be clear to every mind that the question of the existence of an insurrection, and the necessity of calling into requisition for its suppression both the militia of the States and the army and navy of the United States, and of proclaiming martial law, which is an essential condition of war, whether foreign or domestic, must rest with the officer of the government who is charged by the express terms of the Constitution with the performance of this great duty for the common defense and the execution of the laws of the Union.

But it is further insisted by the gentleman in this argument, that Congress has not authorized the establishment of military commissions, which are essential to the judicial administration of martial law and the punishment of crimes committed during the existence of a civil war, and especially, that such commissions are not so authorized to try persons other than those in the military or naval service of the United States, or in the militia of the several States, when in the actual service of the United States. The gentleman's argument assuredly destroys itself, for he insists that the Congress, as the legislative department of the government, can pass no law which, either in peace or war, can constitutionally subject any citizen not in the land or naval forces to trial for crime before a military tribunal, or otherwise than by a jury in the civil courts.

Why does the learned gentleman now tell us that Congress has not authorized this to be done, after declaring just as stoutly that by the fifth and sixth amendments to the Constitution no such military tribunals can be established for the trial of any person not in the military or naval service of the United States, or in the militia when in actual service, for the commission of any crime whatever in time of war or insurrection? It ought to have occurred to the gentleman when commenting upon the exception in the fifth article of the Constitution, that there was a reason for it very different from that which he saw fit to assign, and that reason, manifestly upon the face of the Constitution itself, was, that by the eighth section of the first article, it is expressly provided,

that Congress shall have power to make rules for the government of the land and naval forces, and to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, and that, inasmuch as military discipline and order are as essential in an army in time of peace, as in time of war, if the Constitution would leave this power to Congress in peace, it must make the exception, so that rules and regulations for the government of the army and navy should be operative in time of peace as well as in time of war; because the provisions of the Constitution give the right of trial by jury in time of peace, in all criminal prosecutions by indictment, in terms embracing every human being that may be held to answer for crime in the United States; and therefore if the eighth section of the first article was to remain in full force in time of peace, the exception must be made; and accordingly, the exception was made. But by the argument we have listened to, this court is told, and the country is told, that in time of war—a war which involves in its dread issue the lives and interests of us all—the guarantees of the Constitution are in full force for the benefit of those who conspire with the enemy, creep into your camps, murder in cold blood, in the interests of the invader or insurgent, the commander-in-chief of your army, and secure to him the slow and weak provisions of the civil law, while the soldier, who may, when overcome by the demands of exhausted nature, which cannot be resisted, have slept at his post, is subject to be tried upon the spot by a military tribunal and shot. The argument amounts to this: that as military courts and military trials of civilians in time of war are a usurpation and tyranny, and as soldiers are liable to such arrests and trial, Sergeant Corbett, who shot Booth, should be tried and executed by sentence of a military court; while Booth's co-conspirators and aiders should be saved from any such indignity as a military trial! I confess that I am too dull to comprehend the logic, the reason, or the sense of such a conclusion! If there is any one entitled to this privilege of a civil trial, at a remote period, and by a jury of the district, in time of

civil war, when the foundations of the republic are rocking beneath the earthquake tread of armed rebellion, that man is the defender of the republic. It will never do to say, as has been said in this argument, that the soldier is not liable to be tried in time of war by a military tribunal for any other offense than those prescribed in the rules and articles of war. To my mind, nothing can be clearer than that citizen and soldier alike, in time of civil or foreign war, after a proclamation of martial law, are triable by military tribunals for all offenses of which they may be guilty, in the interests of, or in concert with, the enemy.

These provisions, therefore, of your Constitution for indictment and trial by jury in civil courts of all crimes are, as I shall hereafter show, silent and inoperative in time of war when the public safety requires it.

The argument to which I have been replying, as the court will not fail to perceive, nor that public to which the argument is addressed, is a labored attempt to establish the proposition, that, by the Constitution of the United States, the American people cannot, even in a civil war the greatest the world has ever seen, employ martial law and military tribunals as a means of successfully asserting their authority, preserving their nationality, and securing protection to the lives and property of all, and especially to the persons of those to whom they have committed, officially, the great trust of maintaining the national authority. The gentleman says, with an air of perfect confidence, that he denies the jurisdiction of military tribunals for the trial of civilians in time of war, because neither the Constitution nor laws justify, but on the contrary repudiate them, and that all the experience of the past is against it. I might content myself with saying that the practice of all nations is against the gentleman's conclusion. The struggle for our national independence was aided and prosecuted by military tribunals and martial law, as well as by arms. The contest for American nationality began with the establishment, very soon after the firing of the first gun at Lexington on the 19th day of April, 1775, of military tribunals and martial law. On the

30th of June, 1775, the Continental Congress provided that "whosoever, belonging to the continental army, shall be convicted of holding correspondence with, or giving intelligence to the enemy, either indirectly or directly, shall suffer such punishment as by a court-martial shall be ordered." This was found not sufficient, inasmuch as it did not reach those civilians who, like certain civilians of our day, claim the protection of the civil law in time of war against military arrests and military trials for military crimes. Therefore, the same Congress, on the 7th of November, 1775, amended this provision by striking out the words "belonging to the continental army," and adopting the article as follows:

"All persons convicted of holding a treacherous correspondence with, or giving intelligence to the enemy, shall suffer death or such other punishment as a general court-martial shall think proper."

And on the 17th of June, 1776, the Congress added an additional rule—

"That all persons, not members of, nor owing allegiance to, any of the United States of America, who should be found lurking as spies in or about the fortifications or encampments of the armies of the United States, or any of them, shall suffer death, according to the law and usage of nations, by the sentence of a court-martial, or such other punishment as a court-martial shall direct."

Comprehensive as was this legislation, embracing as it did soldiers, citizens and aliens, subjecting all alike to trial for their military crimes by the military tribunals of justice, according to the law and the usage of nations, it was found to be insufficient to meet that most dangerous of all crimes committed in the interests of the enemy by citizens in time of war—the crime of conspiring together to assassinate or seize and carry away the soldiers and citizens who were loyal to the cause of the country. Therefore, on the 27th of February, 1778, the Congress adopted the following resolution:

"Resolved, That whatever inhabitant of these States shall kill, or seize, or take any loyal citizen or citizens thereof and convey him, her, or them to any place within the power of the enemy, or shall enter into any combination for such purpose, or attempt to

carry the same into execution, or hath assisted or shall assist therein; or shall, by giving intelligence, acting as a guide, or in any manner whatever, aid the enemy in the perpetration thereof, he shall suffer death by the judgment of a court-martial as a traitor, assassin, or spy, if the offense be committed within seventy miles of the headquarters of the grand or other armies of these States where a general officer commands."—*Journals of Congress*, vol. ii, pp. 459, 460.

So stood the law until the adoption of the Constitution of the United States. Every well-informed man knows that at the time of the passage of these acts, the courts of justice having cognizance of all crimes against persons, were open in many of the States, and that by their several constitutions and charters, which were then the supreme law for the punishment of crimes committed within their respective territorial limits, no man was liable to conviction but by the verdict of a jury. Take, for example, the provisions of the constitution of North Carolina, adopted on the 10th of November, 1776, and in full force at the time of the passage of the last resolution by Congress above cited, which provisions are as follows:

"That no freeman shall be put to answer any criminal charge but by indictment, presentment, or impeachment.

"That no freeman shall be convicted of any crime but by the unanimous verdict of a jury of good and lawful men in open court, as heretofore used."

This was the law in 1778 in all the States, and the provision for a trial by jury every one knows meant a jury of twelve men, impanelled and qualified to try the issue in a civil court. The conclusion is not to be avoided, that these enactments of the Congress under the Confederation set aside the trial by jury within the several States, and expressly provided for the trial by court-martial of "any of the inhabitants" who, during the revolution, might, contrary to the provisions of said law, and in aid of the public enemy, give them intelligence, or kill any loyal citizens of the United States, or enter into any combination to kill or carry them away. How comes it, if the argument of the counsel be true, that this enactment was passed by the Congress of 1778, when

the constitutions of the several States at that day as fully guaranteed trial by jury to every person held to answer for a crime, as does the Constitution of the United States at this hour? Notwithstanding this fact, I have yet to learn that any loyal man ever challenged, during all the period of our conflict for independence and nationality, the validity of that law for the trial, for military offenses, by military tribunals, of all offenders, as the law, not of peace, but of war, and absolutely essential to the prosecution of war. I may be pardoned for saying that it is the accepted common law of nations, that martial law is, at all times and everywhere, essential to the successful prosecution of war, whether it be a civil or a foreign war. The validity of these acts of the Continental and Confederate Congress I know was challenged, but only by men charged with the guilt of their country's blood.

Washington, the peerless, the stainless, and the just, with whom God walked through the night of that great trial, enforced this just and wise enactment upon all occasions. On the 30th of September, 1780, Joshua H. Smith, by the order of General Washington, was put upon his trial before a court-martial, convened in the State of New York, on the charge of there aiding and assisting Benedict Arnold, in a combination with the enemy, to take, kill and seize such loyal citizens or soldiers of the United States as were in garrison at West Point. Smith objected to the jurisdiction, averring that he was a private citizen, not in the military or naval service, and therefore was only amenable to the civil authority of the State, whose constitution had guaranteed the right of trial by jury to all persons held to answer for crime. (6 Am. St. Tr., 486.) The constitution of New York then in force had so provided; but, notwithstanding that, the court overruled the plea, held him to answer, and tried him. I repeat, that when Smith was thus tried by court-martial, the constitution of New York as fully guaranteed trial by jury in the civil courts to all civilians charged and held to answer for crimes within the limits of that State, as does the Constitution of the United States guarantee such trial within the

limits of the District of Columbia. By the second of the Articles of Confederation each State retained "its sovereignty," and every power, jurisdiction and right not expressly delegated to the United States in Congress assembled. By those articles there was no express delegation of judicial power; therefore the State retained it fully.

If the military courts, constituted by the commander of the army of the United States under the Confederation, who was appointed only by a resolution of the Congress, without any express grant of power to authorize it—his office not being created by the act of the people in their fundamental law—had jurisdiction in every State to try and put to death "any inhabitant" thereof who should kill any loyal citizen or enter into "any combination" for any such purpose therein in time of war, notwithstanding the provisions of the constitution and laws of such States, how can any man conceive that under the Constitution of the United States, which is the supreme law over every State, anything in the constitution and laws of such State to the contrary notwithstanding, and the supreme law over every Territory of the republic as well, the Commander-in-Chief of the army of the United States, who is made such by the Constitution, and by its supreme authority clothed with the power and charged with the duty of directing and controlling the whole military power of the United States in time of rebellion or invasion, has not that authority?

I need not remind the court that one of the marked differences between the Articles of Confederation and the Constitution of the United States was that, under the Confederation, the Congress was the sole depository of all federal power. The Congress of the Confederation, said Madison, held "the command of the army." (Fed., No. 38.) Has the Constitution, which was ordained by the people the better "to insure domestic tranquillity and to provide for the common defense," so fettered the great power of self-defense against armed insurrection or invasion that martial law, so essential in war, is forbidden by that great instrument? I will yield to no man in reverence for or obedience to the

Constitution of my country, esteeming it, as I do, a new evangel to the nations, embodying the democracy of the New Testament—the absolute equality of all men before the law, in respect of those rights of human nature which are the gift of God, and therefore as universal as the material structure of man. Can it be that this Constitution of ours, so divine in its spirit of justice, so beneficent in its results, so full of wisdom and goodness and truth, under which we became one people, a great and powerful nationality, has, in terms or by implication, denied to this people the power to crush armed rebellion by war, and to arrest and punish, during the existence of such rebellion, according to the laws of war and the usages of nations, secret conspirators, who aid and abet the public enemy?

Here is a conspiracy, organized and prosecuted by armed traitors and hired assassins, receiving the moral support of thousands in every State and district, who pronounced the war for the Union a failure, and your now murdered but immortal Commander-in-Chief a tyrant; the object of which conspiracy, as the testimony shows, was to aid the tottering rebellion which struck at the nation's life. It is in evidence that Davis, Thompson, and others, chiefs in this rebellion, in aid of the same, agreed and conspired with others to poison the fountains of water which supply your commercial metropolis, and thereby murder its inhabitants; to secretly deposit in the habitations of the people and in the ships in your harbors inflammable materials, and thereby destroy them by fire; to murder by the slow and consuming torture of famine your soldiers, captive in their hands; to import pestilence in infected clothes to be distributed in your capital and camps, and thereby murder the surviving heroes and defenders of the republic, who, standing by the holy graves of your unreturning brave, proudly and defiantly challenge to honorable combat and open battle all public enemies, that their country may live; and, finally, to crown this horrid catalogue of crime, this sum of all human atrocities, conspired, as charged upon your record, with the accused and John Wilkes Booth and John H. Surratt, to kill and murder

in your capital the executive officers of your government and the commander of your armies. When this conspiracy, entered into by these traitors, is revealed by its attempted execution, and the foul and brutal murder of your President in the capital, you are told that it is unconstitutional, in order to arrest the further execution of the conspiracy, to interpose the military power of this government for the arrest, without civil process, of any of the parties thereto, and for their trial by a military tribunal of justice. If any such rule had obtained during our struggle for independence, we never would have been a nation. If any such rule had been adopted and acted upon now, during the fierce struggle of the past four years, no man can say that our nationality would have thus long survived.

The whole people of the United States by their Constitution have created the office of President of the United States and commander-in-chief of the army and navy, and have vested, by the terms of that Constitution, in the person of the President and commander-in-chief, the power to enforce the execution of the laws, and preserve, protect, and defend the Constitution.

The question may well be asked: If, as commander-in-chief, the President may not, in time of insurrection of war, proclaim and execute martial law, according to the usages of nations, how he can successfully perform the duties of his office—execute the laws, preserve the Constitution, suppress insurrection, and repel invasion?

Martial law and military tribunals are as essential to the successful prosecution of war as are men, and arms, and munitions. The Constitution of the United States has vested the power to declare war and raise armies and navies exclusively in the Congress, and the power to prosecute the war and command the army and navy exclusively in the President of the United States. As, under the Confederation, the commander of the army, appointed only by the Congress, was by the resolution of that Congress empowered to act as he might think proper for the good and welfare of the service, subject only to such restraints or orders as the

Congress might give; so, under the Constitution, the President is, by the people who ordained that Constitution and declared him commander-in-chief of the army and navy, vested with full power to direct and control the army and navy of the United States, and employ all the forces necessary to preserve, protect and defend the Constitution and execute the laws, as enjoined by his oath and the very letter of the Constitution, subject to no restriction or direction save such as Congress may from time to time prescribe.

That these powers for the common defense, intrusted by the Constitution exclusively to the Congress and the President, are, in time of civil war or foreign invasion, to be exercised without limitation or restraint, to the extent of the public necessity, and without any intervention of the federal judiciary or of State constitutions or State laws, are facts in our history not open to question.

The position is not to be answered by saying you make the American Congress thereby omnipotent, and clothe the American Executive with the asserted attribute of hereditary monarchy—the king can do no wrong. Let the position be fairly stated—that the Congress and President, in war as in peace, are but the agents of the whole people, and that this unlimited power for the common defense against armed rebellion or foreign invasion is but the power of the people intrusted exclusively to the legislative and executive departments as their agents, for any and every abuse of which these agents are directly responsible to the people—and the demagogue cry of an omnipotent Congress, and an Executive invested with royal prerogatives, vanishes like the baseless fabric of a vision. If the Congress, corruptly or oppressively, or wantonly abuse this great trust, the people by the irresistible power of the ballot hurl them from place. If the President so abuse the trust, the people by their Congress withhold supplies, or by impeachment transfer the trust to better hands, strip him of the franchises of citizenship and of office, and declare him forever disqualified to hold any position of honor, trust, or power under the government of his country.

I can understand very well why men should tremble at the exercise of this great power by a monarch whose person, by the constitution of his realm, is inviolable, but I cannot conceive how any American citizen, who has faith in the capacity of the whole people to govern themselves, should give himself any concern on the subject. Mr. Hallam, the distinguished author of the *Constitutional History of England*, has said :

"Kings love to display the divinity with which their flatterers invest them in nothing so much as in the instantaneous execution of their will, and to stand revealed, as it were, in the storm and thunderbolt when their power breaks through the operation of secondary causes and awes a prostrate nation without the intervention of law."

How just are such words when applied to an irresponsible monarch! How absurd, when applied to a whole people, acting through their duly appointed agents, whose will, thus declared, is the supreme law, to awe into submission and peace and obedience, not a prostrate nation, but a prostrate rebellion! The same great author utters the fact which all history attests, when he says:

"It has been usual for all governments during actual rebellion to proclaim martial law for the suspension of civil jurisdiction; and this anomaly, I must admit," he adds, "is very far from being less indispensable at such unhappy seasons where the ordinary mode of trial is by jury, than where the right of decision resides in the court."—*Const. Hist.*, vol. i, ch. 5, p. 326.

That the power to proclaim martial law and fully or partially suspend the civil jurisdiction, federal and state, in time of rebellion or civil war, and punish by military tribunals all offenses committed in aid of the public enemy, is conferred upon Congress and the Executive, necessarily results from the unlimited grants of power for the common defense to which I have already briefly referred. I may be pardoned for saying that this position is not assumed by me for the purposes of this occasion, but that early in the first year of this great struggle for our national life I proclaimed it as a representative of the people, under obligation of my oath,

and, as I then believed, and still believe, upon the authority of the great men who formed and fashioned the wise and majestic fabric of American government.

Some of the citations which I deemed it my duty at that time to make, and some of which I now reproduce, have, I am pleased to say, found a wider circulation in books that have since been published by others.

When the Constitution was on trial for its deliverance before the people of the several States, its ratification was opposed on the ground that it conferred upon Congress and the Executive unlimited power for the common defense. To all such objectors—and they were numerous in every State—that great man, Alexander Hamilton, whose words will live as long as our language lives, speaking to the listening people of all the States and urging them not to reject that matchless instrument which bore the name of Washington, said:

“The authorities essential to the care of the common defense are these: To raise armies; to build and equip fleets; to prescribe rules for the government of both; to direct their operations; to provide for their support. These powers ought to exist without limitation; because it is impossible to foresee or define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them.

“The circumstances that endanger the safety of nations are infinite; and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed. . . . This power ought to be under the direction of the same councils which are appointed to preside over the common defense. . . . It must be admitted, as a necessary consequence, that there can be no limitation of that authority which is to provide for the defense and protection of the community, in any manner essential to its efficacy; that is, in any matter essential to the formation, direction, or support of the national forces. This is one of those truths which, to a correct and unprejudiced mind, carries its own evidence along with it; and may be obscured, but cannot be made plainer by argument or reasoning. It rests upon axioms as simple as they are universal—the means ought to be proportioned to the end; the persons from whose agency the attainment of any end is expected ought to possess the means by which it is to be attained.”—*Federalist*, No. 23.

In the same great contest for the adoption of the Constitution Madison, sometimes called the Father of the Constitution, said:

"Is the power of declaring war necessary? No man will answer this question in the negative. . . . Is the power of raising armies and equipping fleets necessary? . . . It is involved in the power of self-defense. . . . With what color of propriety could the force necessary for defense be limited by those who cannot limit the force of offense? . . . The means of security can only be regulated by the means and the danger of attack. . . . It is in vain to oppose constitutional barriers to the impulse of self-preservation. It is worse than in vain, because it plants in the Constitution itself necessary usurpations of power."—Federalist, No. 41.

With this construction, proclaimed both by the advocates and opponents of its ratification, the Constitution of the United States was accepted and adopted, and that construction has been followed and acted upon, by every department of the government to this day.

It was as well understood then in theory as it has since been illustrated in practice, that the judicial power, both federal and State, had no voice and could exercise no authority in the conduct and prosecution of a war, except in subordination to the political department of the government. The Constitution contains the significant provision, "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

What was this but a declaration, that in time of rebellion, or invasion, the public safety is the highest law?—that so far as necessary the civil courts (of which the Commander-in-Chief, under the direction of Congress, shall be the sole judge) must be silent, and the rights of each citizen, as secured in time of peace, must yield to the wants, interests, and necessities of the nation? Yet we have been gravely told by the gentleman, in his argument, that the maxim, *salus populi suprema est lex*, is but fit for a tyrant's use. Those grand men, whom God taught to build the fabric of empire, thought otherwise, when they put that maxim into the Constitution of their country. It is very clear that the Constitution recognizes the great principle which underlies the structure of society and of all civil government; that no man lives for himself alone, but each for all; that, if need be,

some must die, that the State may live, because at best the individual is but for today, while the commonwealth is for all time. I agree with the gentleman in the maxim which he borrows from Aristotle, "Let the public weal be under the protection of the law;" but I claim that in war, as in peace, by the very terms of the Constitution of the country, the public safety is under the protection of the law; that the Constitution itself has provided for the declaration of war for the common defense, to suppress rebellion, to repel invasion, and, by express terms, has declared that whatever is necessary to make the prosecution of the war successful, may be done, and ought to be done, and is therefore constitutionally lawful.

Who will dare to say that in time of civil war "no person shall be deprived of life, liberty, and property, without due process of law?" This is a provision of your Constitution than which there is none more just or sacred in it; it is, however, only the law of peace, not of war. In peace, that wise provision of the Constitution must be, and is, enforced by the civil courts; in war, it must be, and is, to a great extent, inoperative and disregarded. The thousands slain by your armies in battle were deprived of life "without due process of law." All spies arrested, convicted and executed by your military tribunals in time of war are deprived of liberty and life "without due process of law;" all enemies captured and held as prisoners of war are deprived of liberty "without due process of law;" all owners whose property is forcibly seized and appropriated in war are deprived of their property "without due process of law." The Constitution recognizes the principle of common law, that every man's house is his castle; that his home, the shelter of his wife and children, is his most sacred possession; and has therefore specially provided, "that no soldier shall in time of peace be quartered in any house, without the consent of its owner, nor in time of war, but in a manner to be prescribed by law" (III Amend.); thereby declaring that, in time of war, Congress

may by law authorize, as it has done, that without the consent and against the consent of the owner, the soldier may be quartered in any man's house, and upon any man's hearth. What I have said illustrates the proposition, that in time of war the civil tribunals of justice are wholly or partially silent, as the public safety may require; that the limitations and provisions of the Constitution in favor of life, liberty and property are therefore wholly or partially suspended. In this I am sustained by an authority second to none with intelligent American citizens. Mr. John Quincy Adams, than whom a purer man or a wiser statesman never ascended the chair of the chief magistracy in America, said in his place in the House of Representatives, in 1836, that:

"In the authority given to Congress by the Constitution of the United States to declare war, all the powers incident to war are by necessary implication conferred upon the government of the United States. Now the powers incidental to war are derived, not from their internal municipal source, but from the laws and usages of nations. There are, then, in the authority of Congress and of the Executive two classes of powers altogether different in their nature and often incompatible with each other, the war power and the peace power. The peace power is limited by regulations and restricted by provisions prescribed within the Constitution itself. The war power is limited only by the laws and usage of nations. This power is tremendous; it is strictly constitutional, but it breaks down every barrier so anxiously erected for the protection of liberty, of property, and of life."

If this be so, how can there be trial by jury for military offenses in time of civil war? If you cannot, and do not, try the armed enemy before you shoot him, or the captured enemy before you imprison him, why should you be held to open the civil courts and try the spy, the conspirator, and the assassin, in the secret service of the public enemy, by jury, before you convict and punish him? Why not clamor against holding imprisoned the captured armed rebels, deprived of their liberty without due process of law? Are they not citizens? Why not clamor against slaying for their crime of treason, which is cognizable in the civil courts, by your rifled ordnance and the leaden hail of your musketry

in battle, these public enemies, without trial by jury? Are they not citizens? Why is the clamor confined exclusively to the trial by military tribunals of justice of traitorous spies, traitorous conspirators, and assassins hired to do secretly what the armed rebel attempts to do openly—murder your nationality by assassinating its defenders and its executive officers? Nothing can be clearer than that the rebel captured prisoner, being a citizen of the republic, is as much entitled to trial by jury before he is committed to prison, as the spy or the aider and abettor of the treason by conspiracy and assassination, being a citizen, is entitled to such trial by jury, before he is subjected to the just punishment of the law for his great crime. I think that in time of war the remark of Montesquieu, touching the civil judiciary, is true: that “it is next to nothing.” Hamilton well said, “The Executive holds the sword of the community; the judiciary has no direction of the strength of society; it has neither force nor will; it has judgment alone, and is dependent for the execution of that upon the arm of the Executive.” The people of these States so understood the Constitution, and adopted it, and intended thereby, without limitation or restraint, to empower their Congress and Executive to authorize by law, and execute by force, whatever the public safety might require, to suppress rebellion or repel invasion.

Notwithstanding all that has been said by the counsel for the accused to the contrary, the Constitution has received this construction from the day of its adoption to this hour. The Supreme Court of the United States has solemnly decided that the Constitution has conferred upon the government authority to employ all the means necessary to the faithful execution of all the powers which that Constitution enjoins upon the government of the United States, and upon every department and every officer thereof. Speaking of that provision of the Constitution which provides that “Congress shall have power to make all laws that may be necessary and proper to carry into effect all powers granted

to the government of the United States, or to any department or officer thereof," Chief Justice Marshall, in his great decision in the case of *McCulloch v. State of Maryland*, says:

"The powers given to the government imply the ordinary means of execution, and the government, in all sound reason and fair interpretation, must have the choice of the means which it deems the most convenient and appropriate to the execution of the power. . . . The powers of the government were given for the welfare of the nation; they were intended to endure for ages to come, and to be adapted to the various crises in human affairs. To prescribe the specific means by which government should, in all future time, execute its power, and to confine the choice of means to such narrow limits as should not leave it in the power of Congress to adopt any which might be appropriate and conducive to the end, would be most unwise and pernicious."—(4 Wheat. 420.)

Words fitly spoken! which illustrated at the time of their utterance the wisdom of the Constitution in providing this general grant of power to meet every possible exigency which the fortunes of war might cast upon the country, and the wisdom of which words, in turn, has been illustrated today by the gigantic and triumphant struggle of the people during the last four years for the supremacy of the constitution, and in exact accordance with its provisions. In the light of these wonderful events the words of Pinckney, uttered when the illustrious Chief Justice had concluded this opinion, "The Constitution of my country is immortal!" seem to have become words of prophecy. Has not this great tribunal, through the chief of all its judges, by this luminous and profound reasoning, declared that the government may by law authorize the Executive to employ, in the prosecution of war, the ordinary means, and all the means necessary and adapted to the end? And in the other decision, before referred to, in the 8th of Cranch, arising during the late war with Great Britain, Mr. Justice Story said:

"When the legislative authority, to whom the right to declare war is confided, has declared war in its most unlimited manner, the executive authority, to whom the execution of the war is confided,

is bound to carry it into effect. He has a discretion vested in him as to the manner and extent, but he cannot lawfully transcend the rules of warfare established among civilized nations. He cannot lawfully exercise powers or authorize proceedings which the civilized world repudiates and disclaims. The sovereignty, as to declaring war and limiting its effects, rests with the legislature. The sovereignty as to its execution rests with the President.”—(Brown v. United States, 8 Cranch, 153.)

Has the Congress, to whom is committed the sovereignty of the whole people to declare war, by legislation restricted the President, or attempted to restrict him, in the prosecution of this war for the Union, from exercising all the “powers” and adopting all the “proceedings” usually approved and employed by the civilized world? He would, in my judgment, be a bold man who asserted that Congress has so legislated; and the Congress which should by law fetter the executive arm when raised for the common defense would, in my opinion, be false to their oath. That Congress may prescribe rules for the government of the army and navy and the militia when in actual service, by articles of war, is an express grant of power in the Constitution, which Congress has rightfully exercised, and which the Executive must and does obey. That Congress may aid the Executive by legislation in the prosecution of a war, civil or foreign, is admitted. That Congress may restrain the Executive, and arraign, try, and condemn him for wantonly abusing the great trust, is expressly declared in the Constitution. That Congress shall pass all laws necessary to enable the Executive to execute the laws of the Union, suppress insurrection, and repel invasion, is one of the express requirements of the Constitution, for the performance of which the Congress is bound by an oath.

What was the legislation of Congress when treason fired its first gun on Sumter? By the act of 1795 it is provided that whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceeding or by the powers vested in the mar-

shals, it shall be lawful by this act for the President to call forth the militia of such State, or of any other State or States, as may be necessary to suppress such combinations and to cause the laws to be executed. (1st Statutes at Large, 424.) By the act of 1807 it is provided that in case of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection or of causing the laws to be duly executed, it shall be lawful for him to employ for such purpose such part of the land or naval forces of the United States as shall be judged necessary. (2d Statutes at Large, 443.)

Can any one doubt that by these acts the President is clothed with full power to determine whether armed insurrection exists in any State or Territory of the Union; and if so, to make war upon it with all the force he may deem necessary or be able to command? By the simple exercise of this great power it necessarily results that he may, in the prosecution of the war for the suppression of such insurrection, suspend as far as may be necessary the civil administration of justice by substituting in its stead martial law, which is simply the common law of war. If in such a moment the President may make no arrests without civil warrant, and may inflict no violence or penalties on persons (as is claimed here for the accused), without first obtaining the verdict of juries and the judgment of civil courts, then is this legislation a mockery, and the Constitution, which not only authorized but enjoined its enactment, but a glittering generality and a splendid bauble. Happily the Supreme Court has settled all controversy on this question. In speaking of the Rhode Island insurrection the Court say:

“The Constitution of the United States, as far as it has provided for an emergency of this kind and authorized the general government to interfere in the domestic concerns of a State, has treated the subject as political in its nature and placed the powers in the hands of that department.” . . . By the act of 1795 the power

of deciding whether the exigency has arisen upon which the government of the United States is bound to interfere is given to the President."

The Court add:

"When the President has acted and called out the militia, is a circuit court of the United States authorized to inquire whether his decision was right? If it could, then it would become the duty of the court, provided it came to the conclusion that the President had decided incorrectly, to discharge those who were arrested or detained by the troops in the service of the United States." . . . "If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy and not of order." . . . "Yet if this right does not reside in the courts when the conflict is raging, if the judicial power is at that time bound to follow the decision of the political, it must be equally bound when the contest is over. It cannot, when peace is restored, punish as offenses and crimes the acts which it before recognized and was bound to recognize as lawful."—*Luther v. Borden*, 7 How. 42, 43.

If this be law, what becomes of the volunteer advice of the volunteer counsel, by him given without money and without price, to this court, of their responsibility—their personal responsibility, for obeying the orders of the President of the United States in trying persons accused of the murder of the Chief Magistrate and commander-in-chief of the army and navy of the United States in time of rebellion, and in pursuance of a conspiracy entered into with the public enemy? I may be pardoned for asking the attention of the court to a further citation from this important decision, in which the court say, the employment of military power to put down an armed insurrection "is essential to the existence of every government, and is as necessary to the States of this Union as to any other government; and if the government of the State deem the armed opposition so formidable as to require the use of military force and the declaration of martial law, we see no ground upon which this court can question its authority." (*Ibid.*) This decision in terms declared that under the act of 1795 the President had power to decide and did decide the question so as to exclude further inquiry whether the State government which thus employed force and

proclaimed martial law was the government of the State, and therefore was permitted to act. If a State may do this, to put down armed insurrection, may not the federal government as well? The reason of the man who doubts it may justly be questioned. I but quote the language of that tribunal, in another case before cited, when I say the Constitution confers upon the President the whole executive power.

We have seen that the proclamation of blockade made by the President was affirmed by the Supreme Court as a lawful and valid act, although its direct effect was to dispose of the property of whoever violated it, whether citizen or stranger. It is difficult to perceive what course of reasoning can be adopted, in the light of that decision, which will justify any man in saying that the President had not the like power to proclaim martial law in time of insurrection against the United States, and to establish, according to the customs of war among civilized nations, military tribunals of justice for its enforcement, and for the punishment of all crimes committed in the interests of the public enemy.

These acts of the President have, however, all been legalized by the subsequent legislation of Congress. although the Supreme Court decided, in relation to the proclamation of blockade, that no such legislation was necessary. By the act of August 6, 1861, ch. 63, sec. 3, it is enacted that—

“All the acts, proclamations, and orders of the President of the United States, after the 4th of March, 1861, respecting the army and navy of the United States, and calling out, or relating to, the militia or volunteers from the States, are hereby approved in all respects, legalized, and made valid to the same extent and with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States.”—(12 Stat. at Large, 326.)

This act legalized, if any such legalization was necessary, all that the President had done from the day of his inauguration to that hour, in the prosecution of the war for the Union. He had suspended the privilege of the writ of habeas corpus, and resisted its execution when issued by the Chief Justice of the United States; he had called out and accepted the ser-

VICES of a large body of volunteers for a period not previously authorized by law; he had declared a blockade of the southern ports; he had declared the southern States in insurrection; he had ordered the armies to invade them and suppress it; thus exercising, in accordance with the laws of war, power over the life, the liberty, and the property of the citizens. Congress ratified it and affirmed it.

In like manner and by subsequent legislation did the Congress ratify and affirm the proclamation of martial law of September 25, 1862. That proclamation, as the court will have observed, declares that during the existing insurrection all rebels and insurgents, their aiders and abettors within the United States, and all persons guilty of any disloyal practice affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law and liable to trial and punishment by courts-martial or military commission; and second, that the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, etc., by any military authority, or by the sentence of any court-martial or military commission.

One would suppose that it needed no argument to satisfy an intelligent and patriotic citizen of the United States that, by the ruling of the Supreme Court cited, so much of this proclamation as declares that all rebels and insurgents, their aiders and abettors, shall be subject to martial law and be liable to trial and punishment by court-martial or military commission, needed no ratification by Congress. Every step that the President took against rebels and insurgents was taken in pursuance of the rules of war, and was an exercise of martial law. Who says that he should not deprive them, by the authority of this law, of life and liberty? Are the aiders and abettors of these insurgents entitled to any higher consideration than the armed insurgents themselves? It is against these that the President proclaimed martial law, and against all others who were guilty of any disloyal practice affording aid and comfort to rebels against the authority of

the United States. Against these he suspended the privilege of the writ of habeas corpus; and these, and only such as these, were by that proclamation subjected to trial and punishment by court-martial or military commission.

That the Proclamation covers the offense charged here, no man will, or dare, for a moment deny. Was it not a disloyal practice? Was it not aiding and abetting the insurgents and rebels to enter into a conspiracy with them to kill and murder, within your capital and your intrenched camp, the Commander-in-Chief of our army, your Lieutenant General, and the Vice-President, and the Secretary of State, with intent thereby to aid the rebellion, and subvert the Constitution and laws of the United States? But it is said that the President could not establish a court for their trial, and therefore Congress must ratify and affirm this Proclamation. I have said before that such an argument comes with ill grace from the lips of him who declared as solemnly that neither by the Congress nor by the President could either the rebel himself or his aider or abettor be lawfully and constitutionally subjected to trial by any military tribunal, whether court-martial or military commission. But the Congress did ratify, in the exercise of the power vested in them, every part of this Proclamation. I have said, upon the authority of the fathers of the Constitution, and of its judicial interpreters, that Congress has power by legislation to aid the Executive in the suppression of rebellion, in executing the laws of the Union when resisted by armed insurrection and in repelling invasion.

By the act of March 3, 1863, the Congress of the United States by the first section thereof, declared that during the present rebellion the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the writ of habeas corpus in any case throughout the United States or any part thereof. By the fourth section of the same act it is declared that any order of the President, or under his authority, made at any time during the existence of the present rebellion, shall be a de-

fense in all courts to any action or prosecution, civil or criminal, pending or to be commenced, for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done, under and by virtue of such order. By the fifth section it is provided, that, if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any officer, civil or military, or against any other person, for any arrest or imprisonment made, or other trespasses or wrongs done or committed, or any act omitted to be done at any time during the present rebellion, by virtue of or under color of any authority derived from or exercised by or under the President of the United States, if the defendant shall, upon appearance in such court, file a petition stating the facts upon affidavit, etc., as aforesaid, for the removal of the cause for trial to the circuit court of the United States, it shall be the duty of the State court, upon his giving security, to proceed no further in the cause or prosecution. Thus declaring that all orders of the President, made at any time during the existence of the present rebellion, and all acts done in pursuance thereof, shall be held valid in the courts of justice. Without further inquiry, these provisions of this statute embrace Order 141, which is the proclamation of martial law, and necessarily legalize every act done under it, either before the passage of the act of 1863 or since. Inasmuch as that Proclamation ordered that all rebels, insurgents, their aiders and abettors, and persons guilty of any disloyal practice affording aid and comfort to rebels against the authority of the United States, at any time during the existing insurrection, should be subject to martial law, and liable to trial and punishment by a military commission, the sections of the law just cited declaring lawful all acts done in pursuance of such order, including, of course, the trial and punishment by military commission of all such offenders, as directly legalized this order of the President as it is possible for Congress to legalize or authorize any executive act whatever. (12 Stat. at Large, 755-'6.)

But after assuming and declaring with great earnestness in his argument that no person could be tried and convicted for such crimes by any military tribunal, whether a court-martial or a military commission, save those in the land or naval service in time of war, the gentleman makes the extraordinary statement that the creation of a military commission must be authorized by the legislative department, and demand, if there be any such legislation, "let the statute be produced." The statute has been produced. The power so to try, says the gentleman, must be authorized by Congress, when the demand is made for such authority. Does not the gentleman thereby give up his argument, and admit, that if the Congress has so authorized the trial of all aiders and abettors of rebels or insurgents for whatever they do in aid of such rebels and insurgents during the insurrection, the statute and proceedings under it are lawful and valid? I have already shown that the Congress have so legislated by expressly legalizing Order No. 141, which directed the trial of all rebels, their aiders and abettors, by military commission. Did not Congress expressly legalize this order by declaring that the order shall be a defense in all courts to any action or prosecution, civil or criminal, for acts done in pursuance of it? No amount of argument could make this point clearer than the language of the statute itself. But, says the gentleman, if there be a statute authorizing trials by military commission, "Let it be produced."

By the act of March 3, 1863, it is provided in section thirty that in time of war, insurrection, or rebellion, murder and assault with intent to kill, etc., when committed by persons in the military service, shall be punishable by the sentence of a court-martial or military commission, and the punishment of such offenses shall never be less than those inflicted by the laws of the State or District in which they may have been committed. By the 38th section of the same act, it is provided that all persons who, in time of war or rebellion against the United States, shall be found lurking or acting as spies in or about the camps, etc., of the United States, or

elsewhere, shall be triable by a military commission, and shall, upon conviction, suffer death. Here is a statute which expressly declares that all persons, whether citizens or strangers, who in time of rebellion shall be found acting as spies, shall suffer death upon conviction by a military commission. Why did not the gentleman give us some argument upon this law? We have seen that it was the existing law of the United States under the Confederation. Then, and since, men not in the land or naval forces of the United States have suffered death for this offense upon conviction by courts-martial. If it was competent for Congress to authorize their trial by courts-martial, it was equally competent for Congress to authorize their trial by military commission, and accordingly they have done so. By the same authority the Congress may extend the jurisdiction of military commissions over all military offenses or crimes committed in time of rebellion or war in aid of the public enemy; and it certainly stands with right reason, that if it were just to subject to death, by the sentence of a military commission, all persons who should be guilty merely of lurking as spies in the interests of the public enemy in time of rebellion, though they obtained no information, though they inflicted no personal injury, but were simply overtaken and detected in the endeavor to obtain intelligence for the enemy, those who enter into conspiracy with the enemy, not only to lurk as spies in your camp, but to lurk there as murderers and assassins, and who, in pursuance of that conspiracy, commit assassination and murder upon the Commander-in-Chief of your army within your camp and in aid of rebellion, should be subject in like manner to trial by military commission. (Stat. at Large 12, 736-'7, ch. 8.)

Accordingly, the President having so declared, the Congress, as we have stated, have affirmed that his order was valid, and that all persons acting by authority, and consequently as a court pronouncing such sentence upon the offender as the usage of war requires, are justified by the law of the land. With all respect, permit me to say that the

learned gentleman has manifested more acumen and ability in his elaborate argument by what he has omitted to say than by anything which he has said. By the act of July 2, 1864, cap. 215, it is provided that the commanding general in the field, or the commander of the department, as the case may be, shall have power to carry into execution all sentences against guerilla marauders for robbery, arson, burglary, etc., and for violation of the laws and customs of war, as well as sentences against spies, mutineers, deserters and murderers.

From the legislation I have cited, it is apparent that military commissions are expressly recognized by the law-making power; that they are authorized to try capital offenses against citizens not in the service of the United States, and to pronounce the sentence of death upon them; and that the commander of a department, or the commanding general in the field, may carry such sentence into execution. But, says the gentleman, grant all this to be so; Congress has not declared in what manner the court shall be constituted. The answer to that objection has already been anticipated in the citation from Benét, wherein it appeared to be the rule of the law martial that in the punishment of all military offenses not provided for by the written law of the land, military commissions are constituted for that purpose by the authority of the commanding officer or the Commander-in-Chief, as the case may be, who selects the officers of a court-martial; that they are similarly constituted, and their proceedings conducted according to the same general rules. That is a part of the very law martial which the President proclaimed, and which the Congress has legalized. The Proclamation has declared that all such offenders shall be tried by military commissions. The Congress has legalized the same by the act which I have cited; and by every intendment it must be taken that, as martial law is by the Proclamation declared to be the rule by which they shall be tried, the Congress, in affirming the act of the President, simply declared that they should be tried according to the customs of martial law; that the commission should be constituted by the Commander-in-Chief ac-

cording to the rule of procedure known as martial law; and that the penalties inflicted should be in accordance with the laws of war and the usage of nations. Legislation no more definite than this has been upon your statute book since the beginning of the century, and has been held by the Supreme Court of the United States valid for the punishment of offenders.

By the 32d article of the act of 23d April, 1800, it is provided that "all crimes committed by persons belonging to the navy which are not specified in the foregoing articles shall be punished according to the laws and customs in such cases at sea." Of this article the Supreme Court of the United States say, that when offenses and crimes are not given in terms or by definition, the want of it may be supplied by a comprehensive enactment such as the 32d article of the rules for the government of the navy; which means that courts-martial have jurisdiction of such crimes as are not specified, but which have been recognized to be crimes and offenses by the usages in the navies of all nations, and that they shall be punished according to the laws and customs of the sea. (*Dynes v. Hoover*, 20 Howard, 82.)

But it is a fact that must not be omitted in the reply which I make to the gentleman's argument, that an effort was made by himself and others in the Senate of the United States, on the 3d of March last, to condemn the arrests, imprisonments, etc., made by order of the President of the United States in pursuance of his proclamation, and to reverse, by the judgment of that body, the law which had been before passed affirming his action, which effort most signally failed.

Thus we see that the body which by the Constitution, if the President had been guilty of the misdemeanors alleged against him in this argument of the gentleman, would, upon presentation of such charge in legal form against the President, constitute the high court of impeachment for his trial and condemnation, has decided the question in advance, and declared upon the occasion referred to, as they had before declared by solemn enactment, that this order of the President

declaring martial law and the punishment of all rebels and insurgents, their aiders and abettors, by military commission, should be enforced during the insurrection, as the law of the land, and that the offenders should be tried, as directed, by military commission. It may be said that this subsequent legislation of Congress, ratifying and affirming what had been done by the President, can have no validity. Of course it cannot if neither the Congress nor the Executive can authorize the proclamation and enforcement of martial law in the suppression of rebellion for the punishment of all persons committing military offenses in aid of that rebellion. Assuming, however, as the gentleman seemed to assume, by asking for the legislation of Congress, that there is such power in Congress, the Supreme Court of the United States has solemnly affirmed that such ratification is valid. (2 Black, 671.)

The gentleman's argument is full of citations of English precedent. There is a late English precedent bearing upon this point—the power of the legislature, by subsequent enactment, to legalize executive orders, arrests and imprisonment of citizens—that I beg leave to commend to his consideration. I refer to the statute of 11 and 12 Victoria, ch. 35, entitled “An act to empower the lord lieutenant, or other chief governor or governors of Ireland, to apprehend and detain until the first day of March, 1849, such persons as he or they shall suspect of conspiring against her Majesty's person and government,” passed July 25, 1848, which statute in terms declares that all and every person and persons who is, are, or shall be, within that period, within that part of the United Kingdom of England and Ireland called Ireland at or on the day the act shall receive her Majesty's royal assent, or after, by warrant for high treason or treasonable practices, or suspicion of high treason or treasonable practices, signed by the lord lieutenant, or other chief governor or governors of Ireland for the time being, or his or their chief secretary, for such causes as aforesaid, may be detained in safe custody without bail or main prize, until the first day of

March, 1849; and that no judge or justice shall bail or try any such person or persons so committed, without order from her Majesty's privy council, until the said first day of March, 1849, any law or statute to the contrary notwithstanding. The 2d section of this act provides that, in cases where any persons have been, before the passing of the act, arrested, committed, or detained for such cause by warrant or warrants signed by the officers aforesaid, or either of them, it may be lawful for the person or persons to whom such warrants have been or shall be directed, to detain such person or persons in his or their custody in any place whatever in Ireland; and that such person or persons to whom such warrants have been or shall be directed shall be deemed and taken, to all intents and purposes, lawfully authorized to take into safe custody and be the lawful jailers and keepers of such persons so arrested, committed, or detained.

Here the power of arrest is given by the act of Parliament to the governor or his secretary; the process of the civil courts was wholly suspended; bail was denied and the parties imprisoned, and this not by process of the courts, but by warrant of a chief governor or his secretary; not for crimes charged to have been committed, but for being suspected of treasonable practices. Magna charta it seems opposes no restraint, notwithstanding the parade that is made about it in this argument, upon the power of the Parliament of England to legalize arrests and imprisonments made before the passage of the act upon an executive order, and without colorable authority of statute law, and to authorize like arrests and imprisonments of so many of six million of people as such executive officers might suspect of treasonable practices.

But, says the gentleman, whatever may be the precedents, English or American, whatever may be the provisions of the Constitution, whatever may be the legislation of Congress, whatever may be the proclamations and orders of the President as commander-in-chief, it is a usurpation and a tyranny in time of rebellion and civil war to subject any citizen to

trial for any crime before military tribunals, save such citizens as are in the land or naval forces, and against this usurpation, which he asks this court to rebuke by solemn decision, he appeals to public opinion. I trust that I set as high value upon enlightened public opinion as any man. I recognize it as the reserved power of the people which creates and dissolves armies, which creates and dissolves legislative assemblies, which enacts and repeals fundamental laws, the better to provide for personal security by the due administration of justice. To that public opinion upon this very question of the usurpation of authority, of unlawful arrests, and unlawful imprisonments, and unlawful trials, condemnations and executions by the late President of the United States, an appeal has already been taken. On this very issue the President was tried before the tribunal of the people, that great nation of freemen who cover this continent, looking out upon Europe from their eastern and upon Asia from their western homes. That people came to the consideration of this issue not unmindful of the fact that the first struggle for the establishment of our nationality could not have been, and was not, successfully prosecuted without the proclamation and enforcement of martial law, declaring, as we have seen, that any inhabitant who, during that war, should kill any loyal citizen, or enter into any combination for that purpose, should, upon trial and conviction before a military tribunal, be sentenced as an assassin, traitor, or spy, and should suffer death, and that in this last struggle for the maintenance of American nationality the President but followed the example of the illustrious Father of his Country. Upon that issue the people passed judgment on the 8th day of last November, and declared that the charge of usurpation was false.

From this decision of the people there lies no appeal on this earth. Who can rightfully challenge the authority of the American people to decide such questions for themselves? The voice of the people, thus solemnly proclaimed, by the omnipotence of the ballot, in favor of the righteous order of their murdered President, issued by him for the common de-

fense, for the preservation of the Constitution, and for the enforcement of the laws of the Union, ought to be accepted, and will be accepted, I trust, by all just men, as the voice of God.

May It Please the Court: I have said this much touching the right of the people, under their Constitution, in time of civil war and rebellion, to proclaim through their Executive, with the sanction and approval of their Congress, martial law, and enforce the same according to the usage of nations.

I submit that it has been shown that, by the letter and spirit of the Constitution, as well as by its contemporaneous construction, followed and approved by every department of the government, this right is in the people; that it is inseparable from the condition of war, whether civil or foreign, and absolutely essential to its vigorous and successful prosecution; that according to the highest authority upon constitutional law, the proclamation and enforcement of martial law are "usual under all governments in time of rebellion;" that our own highest judicial tribunal has declared this, and solemnly ruled that the question of the necessity for its exercise rests exclusively with Congress and the President; and that the decision of the political departments of the government, that there is an armed rebellion and a necessity for the employment of military force and martial law in its suppression, concludes the judiciary.

In submitting what I have said in support of the jurisdiction of this honorable court, and of its constitutional power to hear and determine this issue, I have uttered my own convictions; and for their utterance in defense of my country, and its right to employ all the means necessary for the common defense against armed rebellion and secret treasonable conspiracy in aid of such rebellion, I shall neither ask pardon nor offer apology. I find no words with which more fitly to conclude all I have to say upon the question of the jurisdiction and constitutional authority of this court than those employed by the illustrious Lord Brougham to the House of Peers in support of the bill before referred to,

which empowered the lord lieutenant of Ireland, and his deputies, to apprehend and detain, for the period of seven months or more, all such persons within that island as they should suspect of conspiracy against her Majesty's person and government. Said that illustrious man: "A friend of liberty I have lived, and such will I die; nor care I how soon the latter event may happen, if I cannot be a friend of liberty without being a friend of traitors at the same time—a protector of criminals of the deepest dye—an accomplice of foul rebellion and of its concomitant, civil war, with all its atrocities and all its fearful consequences." (Hansard's Debates, 3d series, vol. 100, p. 635.)

THE CONSPIRACY.

May it please the Court: It only remains for me to sum up the evidence, and present my views of the law arising upon the facts in the case on trial. The questions of fact involved in the issue are:

First, did the accused, or any two of them, confederate and conspire together as charged? and—

Second, did the accused, or any of them, in pursuance of such conspiracy, and with the intent alleged, commit either or all of the several acts specified?

If the conspiracy be established, as laid, it results that whatever was said or done by either of the parties thereto, in the furtherance or execution of the common design, is the declaration or act of all the other parties to the conspiracy; and this, whether the other parties, at the time such words were uttered or such acts done by their confederates, were present or absent—here, within the intrenched lines of your capital, or crouching behind the intrenched lines of Richmond, or awaiting the results of their murderous plot against their country, its Constitution and laws, across the border, under the shelter of the British flag.

The declared and accepted rule of law in cases of conspiracy is that—

"In prosecutions for conspiracy it is an established rule that where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party, in pursuance of the original concerted plan, and in reference to the common object, is, in the contemplation of law as well as in sound reason, the act of the whole party; and, therefore, the proof of the act will be evidence against any of the others, who were engaged in the same general conspiracy, without regard to the question whether the prisoner is proved to have been concerned in the particular transaction." (Phillips on Evidence, p. 210.)

The same rule obtains in cases of treason: "If several persons agree to levy war, some in one place and some in another, and one party do actually appear in arms, this is a levying of war by all, as well those who were not in arms as those who were, if it were done in pursuance of the original concert, for those who made the attempt were emboldened by the confidence inspired by the general concert, and therefore these particular acts are in justice imputable to all the rest." (1 East., Pleas of the Crown, p. 97; Roscoe, 84.)

In *Ex parte Bollman and Swartwood*, 4 Cranch, 126, Marshall, Chief Justice, rules:

"If war be actually levied—that is, if a body of men be actually assembled for the purpose of effecting, by force, a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

In *United States v. Cole*, 5 McLean, 601, Mr. Justice McLean says:

"A conspiracy is rarely, if ever, proved by positive testimony. When a crime of high magnitude is about to be perpetrated by a combination of individuals, they do not act openly but covertly and secretly. The purpose formed is known only to those who enter into it. Unless one of the original conspirators betray his companions and give evidence against them, their guilt can be proved only by circumstantial evidence. . . . It is said by some writers on evidence that such circumstances are stronger than positive proof. A witness swearing positively, it is said, may misapprehend the facts or swear falsely, but that circumstances cannot lie.

"The common design is the essence of the charge; and this may be made clear to appear when the defendants steadily pursue the same object, whether acting separately or together, by common or

different means, all leading to the same unlawful result. And where *prima facie* evidence has been given of a combination, the acts or confessions of one are evidence against all. . . . It is reasonable that where a body of men assume the attribute of individuality, whether for commercial business or for the commission of a crime, that the association should be bound by the acts of one of its members, in carrying out the design."

It is a rule of the law, not to be overlooked in this connection, that the conspiracy or agreement of the parties, or some of them, to act in concert to accomplish the unlawful act charged, may be established either by direct evidence of a meeting or consultation for the illegal purpose charged, or more usually, from the very nature of the case, by circumstantial evidence. (2 Starkie, 232.)

Lord Mansfield ruled that it was not necessary to prove the actual fact of a conspiracy, but that it might be collected from collateral circumstances. (Parson's Case, 1 W. Blackstone, 392.)

"If, on a charge of conspiracy, it appear that two persons by their acts are pursuing the same object, and often by the same means, or one performing part of the act, and the other completing it, for the attainment of the same object, the jury may draw the conclusion there is a conspiracy. If a conspiracy be formed, and a person join in it afterwards, he is equally guilty with the original conspirators." (Roscoe, 415.)

"The rule of the admissibility of the acts and declarations of any one of the conspirators, said or done in furtherance of the common design, applies in cases as well where only part of the conspirators are indicted, or upon trial, as where all are indicted and upon trial. Thus, upon an indictment for murder, if it appear that others, together with the prisoner, conspired to commit the crime, the act of one, done in pursuance of that intention, will be evidence against the rest." (2d Starkie, 237.)

They are all alike guilty as principals. (Com. v. Knapp, 9 Pick. 496; 10 Pick. 477; 6 Term Rep. 528; 11 East. 584.)

What is the evidence, direct and circumstantial, that the accused, or either of them, together with John H. Surratt, John Wilkes Booth, Jefferson Davis, George N. Sanders, Beverly Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, and George Young, did com-

bine, confederate, and conspire, in aid of the existing rebellion, as charged, to kill and murder, within the military department of Washington, and within the fortified and intrenched lines thereof, Abraham Lincoln, late, and, at the time of the said combining, confederating, and conspiring, President of the United States of America, and commander-in-chief of the army and navy thereof; Andrew Johnson, Vice-President of the United States; William H. Seward, Secretary of State of the United States, and Ulysses S. Grant, lieutenant general of the armies thereof, and then in command, under the direction of the President?

The time, as laid in the charge and specification, when this conspiracy was entered into, is immaterial, so that it appear by the evidence that the criminal combination and agreement were formed before the commission of the acts alleged. That Jefferson Davis, one of the conspirators named, was the acknowledged chief and leader of the existing rebellion against the government of the United States, and that Jacob Thompson, George N. Sanders, Clement C. Clay, Beverly Tucker, and others named in the specification, were his duly accredited and authorized agents to act in the interests of said rebellion, are facts established by the testimony in this case beyond all question. That Davis, as the leader of said rebellion, gave to those agents, then in Canada, commissions in blank, bearing the official signature of his war minister, James A. Seddon, to be by them filled up and delivered to such agents as they might employ to act in the interest of the rebellion within the United States and intended to be a cover and protection for any crimes they might therein commit in the service of the rebellion, is also a fact established here, and which no man can gainsay. Who doubts that Kennedy, whose confession, made in view of immediate death, as proved here, was commissioned by those accredited agents of Davis to burn the city of New York?—that he was to have attempted it on the night of the presidential election, and that he did, in combination with his confederates, set fire to four hotels in

the city of New York on the night of the 25th of November last? Who doubts that, in like manner, in the interests of the rebellion and by the authority of Davis, these his agents also commissioned Bennett H. Young to commit arson, robbery, and the murder of unarmed citizens in St. Albans, Vermont? Who doubts, upon the testimony shown, that Davis, by his agents, deliberately adopted the system of starvation for the murder of our captive soldiers in his hands; or that, as shown by the testimony, he sanctioned the burning of hospitals and steamboats, the property of private persons, and paid therefor from his stolen treasure the sum of thirty-five thousand dollars in gold? By the evidence of Joseph Godfrey Hyams it is proved that Thompson—the agent of Jefferson Davis—paid him money for the service he rendered in the infamous and fiendish project of importing pestilence into our camps and cities to destroy the lives of citizens and soldiers alike, and into the house of the President for the purpose of destroying his life. It may be said, and doubtless will be said, by the pensioned advocates of this rebellion, that Hyams, being infamous, is not to be believed. It is admitted that he is infamous, as it must be conceded that any man is infamous who either participates in such a crime or attempts in anywise to extenuate it. But it will be observed that Hyams is supported by the testimony of Mr. Sanford Conover, who heard Blackburn and the other rebel agents in Canada speak of this infernal project, and by the testimony of Mr. Wall, the well-known auctioneer of this city, whose character is unquestioned, that he received this importation of pestilence (of course without any knowledge of the purpose), and that Hyams consigned the goods to him in the name of J. W. Harris—a fact in itself an acknowledgment of guilt; and that he received afterwards a letter from Harris, dated Toronto, Canada West, December 1, 1864, wherein Harris stated that he had not been able to come to the States since his return to Canada, and asked for an account of the sale. He identifies the Godfrey Joseph Hyams who testified in court as the J. W. Harris who imported the

pestilence. The very transaction shows that Hyams' statement is truthful. He gives the names of the parties connected with this infamy (Clement C. Clay, Dr. Blackburn, Rev. Dr. Stuart Robinson, J. C. Holcombe—all refugees from the confederacy in Canada), and states that he gave Thompson a receipt for the fifty dollars paid to him, and that he was by occupation a shoemaker; in none of which facts is there an attempt to discredit him. It is not probable that a man in his position in life would be able to buy five trunks of clothing, ship them all the way from Halifax to Washington, and then order them to be sold at auction, without regard to price, solely upon his own account. It is a matter of notoriety that a part of his statement is verified by the results at Newbern, North Carolina, to which point, he says, a portion of the infected goods were shipped, through a sutler; the result of which was, that nearly two thousand citizens and soldiers died there about that time with the yellow fever.

That the rebel chief, Jefferson Davis, sanctioned these crimes, committed and attempted through the instrumentality of his accredited agents in Canada—Thompson, Clay, Tucker, Sanders, Cleary, etc.—upon the persons and property of the people of the north, there is positive proof on your record. The letter brought from Richmond, and taken from the archives of his late pretended government there, dated February 11, 1865, and addressed to him by a late rebel senator from Texas, W. S. Oldham, contains the following significant words:

"When Senator Johnson, of Missouri, and myself waited on you a few days since, in relation to the project of annoying and harassing the enemy by means of burning their shipping, towns, etc., etc., there were several remarks made by you upon the subject, which I was not fully prepared to answer, but which, upon subsequent conference with parties proposing the enterprise, I find cannot apply as objections to the scheme. First, the 'combustible materials' consist of several preparations, and not one alone, and can be used without exposing the party using them to the least danger of detection whatever. . . . Second, there is no necessity for sending persons in the military service into the enemy's country, but the work may be done by agents. . . . I have seen enough of the effects that can be produced to satisfy me that in most cases,

without any danger to the parties engaged, and in others but very slight, we can, first, burn every vessel that leaves a foreign port for the United States; second, we can burn every transport that leaves the harbor of New York, or other northern port, with supplies for the armies of the enemy in the south; third, burn every transport and gunboat on the Mississippi river, as well as devastate the country of the enemy, and fill his people with terror and consternation. . . . For the purpose of satisfying your mind upon the subject, I respectfully, but earnestly, request that you will give an interview with General Harris, formerly a member of Congress from Missouri, who, I think, is able, from conclusive proofs, to convince you that what I have suggested is perfectly feasible and practicable."

No one can doubt, from the tenor of this letter, that the rebel Davis only wanted to be satisfied that this system of arson and murder could be carried on by his agents in the north successfully and without detection. With him it was not a crime to do these acts, but only a crime to be detected in them. But Davis, by his indorsement on this letter, dated the 20th of February, 1865, bears witness to his own complicity and his own infamy in this proposed work of destruction and crime for the future, as well as to his complicity in what had before been attempted without complete success. Kennedy, with his confederates, had failed to burn the city of New York. "The combustibles" which Kennedy had employed were, it seems, defective. This was "a difficulty to be overcome." Neither had he been able to consummate the dreadful work without subjecting himself to detection. This was another "difficulty to be overcome." Davis, on the 20th of February, 1865, indorsed upon this letter these words: "Secretary of State, at his convenience, see General Harris and learn what plan he has for overcoming the difficulties heretofore experienced. J. D."

This indorsement is unquestionably proved to be the handwriting of Jefferson Davis, and it bears witness on its face that the monstrous proposition met his approval, and that he desired his rebel Secretary of State, Benjamin, to see General Harris and learn how to overcome the difficulty heretofore experienced, to-wit: the inefficiency of "the combustible materials" that had been employed, and the liability of his

agents to detection. After this, who will doubt that he had endeavored, by the hand of incendiaries, to destroy by fire the property and lives of the people of the north, and thereby "fill them with terror and consternation;" that he knew his agents had been unsuccessful; that he knew his agents had been detected in their villainy and punished for their crime; that he desired through a more perfect "chemical preparation," by the science and skill of Professor McCulloch, to accomplish successfully what had before been unsuccessfully attempted?

The intercepted letter of his agent, Clement C. Clay, dated St. Catherine's, Canada West, November 1, 1864, is an acknowledgment and confession of what they had attempted, and a suggestion made through J. B. Benjamin, rebel Secretary of State, of what remained to be done, in order to make the "chemical preparations" efficient. Speaking of this Bennett H. Young, he says: "You have doubtless learned through the press of the United States of the raid on St. Albans by about twenty-five confederate soldiers, led by Lieutenant Bennett H. Young; of their attempt and failure to burn the town; of their robbery of three banks there of the aggregate amount of about two hundred thousand dollars; of their arrest in Canada, by United States forces; of their commitment and the pending preliminary trial." He makes application, in aid of Young and his associates, for additional documents, showing that they acted upon the authority of the Confederate States government, taking care to say, however, that he held such authority at the time, but that it ought to be more explicit, so far as regards the particular acts complained of. He states that he met Young at Halifax in May, 1864, who developed his plans for retaliation on the enemy; that he, Clay, recommended him to the rebel Secretary of War; that after this "Young was sent back by the Secretary of War with a commission as second lieutenant to execute his plans and purposes, but to report to Hon. — and myself." Young afterwards "proposed passing through New England, burning some towns and robbing them of whatever he could

convert to the use of the confederate government. This I approved as justifiable retaliation. He attempted to burn the town of St. Albans, Vermont, and would have succeeded but for the failure of the chemical preparation with which he was armed. He then robbed the banks of funds amounting to over two hundred thousand dollars. That he was not prompted by selfish or mercenary motives I am as well satisfied as I am that he is an honest man. He assured me before going that his effort would be to destroy towns and farm-houses, but not to plunder or rob; but he said if, after firing a town, he saw he could take funds from a bank or any house, and thereby might inflict injury upon the enemy and benefit his own government, he would do so. He added most emphatically, that whatever he took should be turned over to the government or its representatives in foreign lands. My instructions to him were, to destroy whatever was valuable; not to stop to rob, but if, after firing a town, he could seize and carry off money or treasury or bank notes, he might do so upon condition that they were delivered to the proper authorities of the Confederate States"—that is, to Clay himself.

When he wrote this letter it seems that this accredited agent of Jefferson Davis was as strongly impressed with the usurpation and despotism of Mr. Lincoln's administration as some of the advocates of his aiders and abettors seem to be at this day; and he indulges in the following statement: "All that a large portion of the northern people, especially in the northwest, want to resist the oppressions of the despotism at Washington is a leader. They are ripe for resistance, and it may come soon after the presidential election. At all events, it must come, if our armies are not overcome, or destroyed, or dispersed. No people of the Anglo-Saxon blood can long endure the usurpations and tyrannies of Lincoln." Clay does not sign the dispatch, but indorses the bearer of it as a person who can identify him and give his name. The bearer of that letter was the witness Richard Montgomery, who saw Clay write a portion of the letter and received it from his hands, and subsequently delivered it to the Assist-

ant Secretary of War of the United States, Mr. Dana. That the letter is in Clay's handwriting is clearly proved by those familiar with it. Mr. Montgomery testifies that he was instructed by Clay to deliver this letter to Benjamin, the rebel Secretary of State, if he could get through to Richmond, and to tell him what names to put in the blanks.

This letter leaves no doubt, if any before existed in the mind of any one who had read the letter of Oldham and Davis' indorsment thereon, that "the chemical preparations" and "combustible materials" had been tried and had failed, and it had become a matter of great moment and concern that they should be so prepared as, in the words of Davis, "to overcome the difficulties heretofore experienced;" that is to say, complete the work of destruction, and secure the perpetrators against personal injury or detection in the performance of it.

It only remains to be seen whether Davis, the procurer of arson and of the indiscriminate murder of the innocent and unoffending necessarily resultant therefrom, was capable also of endeavoring to procure, and in fact did procure, the murder, by direct assassination, of the President of the United States and others charged with the duty of maintaining the government of the United States, and of suppressing the rebellion in which this arch-traitor and conspirator was engaged.

The official papers of Davis, captured under the guns of our victorious army in his rebel capital; identified beyond question or shadow of doubt, and placed upon your record, together with the declarations and acts of his co-conspirators and agents, proclaim to all the world that he was capable of attempting to accomplish his treasonable procurement of the murder of the late President, and other chief officers of the United States, by the hands of hired assassins.

In the fall of 1864 Lieutenant W. Alston addresses to "his excellency" a letter now before the court, which contains the following words:

"I now offer you my services, and if you will favor me in my designs, I will proceed, as soon as my health will permit, to rid my country of some of her deadliest enemies, by striking at the very heart's blood of those who seek to enchain her in slavery. I consider nothing dishonorable having such a tendency. All I ask of you is, to favor me by granting me the necessary papers, etc., to travel on. . . . I am perfectly familiar with the north, and feel confident that I can execute anything I undertake. I was in the raid last June in Kentucky, under General John H. Morgan; . . . was taken prisoner; . . . escaped from them by dressing myself in the garb of a citizen. . . . I went through to the Canadas, from whence by the assistance of Colonel J. P. Holcomb, I succeeded in working my way around and through the blockade. . . . I should like to have a personal interview with you in order to perfect the arrangements before starting."

Is there any room to doubt that this was a proposition to assassinate, by the hand of this man and his associates, such persons in the north as he deemed the "deadliest enemies" of the rebellion? The weakness of the man who for a moment can doubt that such was the proposition of the writer of this letter is certainly an object of commiseration. What had Jefferson Davis to say to this proposed assassination of the "deadliest enemies" in the north of his great treason? Did the atrocious suggestion kindle in him indignation against the villain who offered, with his own hand, to strike the blow? Not at all. On the contrary, he ordered his private secretary, on the 29th of November, 1864, to indorse upon the letter these words: "Lieutenant W. Alston; accompanied raid into Kentucky, and was captured, but escaped into Canada, from whence he found his way back. Now offers his services to rid the country of some of its deadliest enemies; asks for papers, etc. Respectfully referred, by direction of the President, to the honorable Secretary of War." It is also indorsed, for attention, "By order. (Signed) J. A. Campbell, Assistant Secretary of War."

Note the fact in this connection, that Jefferson Davis himself, as well as his subordinates, had, before the date of this indorsement, concluded that Abraham Lincoln was "the deadliest enemy" of the rebellion. You hear it in the rebel camp in Virginia in 1863, declared by Booth, then and there pre-

sent, and assented to by rebel officers, that "Abraham Lincoln must be killed." You hear it in that slaughter-pen in Georgia, Andersonville, proclaimed among rebel officers, who, by the slow torture of starvation, inflicted cruel and untimely death on ten thousand of your defenders, captives in their hands—whispering, like demons, their horrid purpose, "Abraham Lincoln must be killed." And in Canada, the accredited agents of Jefferson Davis, as early as October, 1864, and afterwards, declared that "Abraham Lincoln must be killed" if his re-election could not be prevented. These agents in Canada, on the 13th of October, 1864, delivered, in cipher, to be transmitted to Richmond by Richard Montgomery, the witness, whose reputation is unchallenged, the following communication:

October 13, 1864.

"We again urge the immense necessity of our gaining immediate advantages. Strain every nerve for victory. We now look upon the re-election of Lincoln in November as almost certain, and we need to whip his hirelings to prevent it. Besides, with Lincoln re-elected, and his armies victorious, we need not hope even for recognition, much less the help mentioned in our last. Holcomb will explain this. Those figures of the Yankee armies are correct to a unit. Our friends shall be immediately set to work as you direct."

To which an official reply, in cipher, was delivered to Montgomery by an agent of the state department in Richmond, dated October 19, 1864, as follows:

"Your letter of the 13th instant is at hand. There is yet time enough to colonize many voters before November. A blow will shortly be stricken here. It is not quite time. General Longstreet is to attack Sheridan without delay, and then move north as far as practicable toward unprotected points. This will be made instead of movement before mentioned. He will endeavor to assist the republicans in collecting their ballots. Be watchful and assist him."

On the very day of the date of this Richmond dispatch Sheridan was attacked, with what success history will declare. The court will not fail to notice that the re-election of Mr. Lincoln is to be prevented if possible, by any and

every means. Nor will they fail to notice that Holcomb is to "explain this"—the same person who, in Canada, was the friend and advisor of Alston, who proposed to Davis the assassination of the "deadliest enemies" of the rebellion.

In the dispatch of the 13th of October, which was borne by Montgomery, and transmitted to Richmond in October last, you will find these words: "Our friends shall be immediately set to work as you direct." Mr. Lincoln is the subject of that dispatch. Davis is therein notified that his agents in Canada look upon the re-election of Mr. Lincoln in November as almost certain. In this connection he is assured by those agents, that the friends of their cause are to be set to work as Davis had directed. The conversations, which are proved by witnesses whose character stands unimpeached, disclose what "work" the "friends" were to do under the direction of Davis himself. Who were these "friends," and what was "the work" which his agents, Thompson, Clay, Tucker and Sanders had been directed to set them at? Let Thompson answer for himself. In a conversation with Richard Montgomery in the summer of 1864, Thompson said that "he had his friends, confederates, all over the northern States, who were ready and willing to go any lengths for the good of the cause of the south, and he could at any time have the tyrant Lincoln, or any other of his advisers that he chose, put out of his way; that they would not consider it a crime when done for the cause of the confederacy." This conversation was repeated by the witness in the summer of 1864 to Clement C. Clay, who immediately stated: "That is so; we are all devoted to our cause and ready to go any length—to do anything under the sun."

At and about the time that these declarations of Clay and Thompson were made, Alston, who made the proposition, as we have seen, to Davis, to be furnished with papers to go north and rid the confederacy of some of its "deadliest enemies," was in Canada. He was doubtless one of the "friends" referred to. As appears by the testimony of Montgomery, Payne, the prisoner at your bar, was about that time in Can-

ada, and was seen standing by Thompson's door, engaged in a conversation with Clay, between whom and the witness some words were interchanged, when Clay stated he (Payne) was one of their friends—"we trust him." It is proved beyond a shadow of doubt that in October last John Wilkes Booth, the assassin of the President, was also in Canada and upon intimate terms with Thompson, Clay, Sanders and other rebel agents. Who can doubt, in the light of the events which have since transpired, that he was one of the "friends" to be "set to work," as Davis had already directed—not, perhaps, as yet to assassinate the President, but to do that other work which is suggested in the letter of Oldham, indorsed by Davis in his own hand, and spread upon your record—the work of the secret incendiary, which was to "fill the people of the north with terror and consternation." The other "work" spoken of by Thompson—putting the tyrant Lincoln and any of his advisers out of the way, was work doubtless to be commenced only after the re-election of Mr. Lincoln, which they had already declared in their dispatch to their employer, Davis, was with them a foregone conclusion. At all events, it was not until after the presidential election in November that Alston proposed to Davis to go north on the work of assassination; nor was it until after that election that Booth was found in possession of the letter which is in evidence, and which discloses the purpose to assassinate the President. Being assured, however, when Booth was with them in Canada, as they had already declared in their dispatch, that the re-election of Mr. Lincoln was certain, in which event there would be no hope for the confederacy, they doubtless entered into the arrangement with Booth as one of their "friends," that as soon as that fact was determined he should go "to work," and as soon as might be "rid the confederacy of the tyrant Lincoln and of his advisers."

That these persons named upon your record, Thompson, Sanders, Clay, Cleary and Tucker, were the agents of Jefferson Davis, is another fact established in this case beyond a doubt. They made affidavit of it themselves, of record here,

upon the examination of their "friends," charged with the raid upon St. Albans, before Judge Smith, in Canada. It is in evidence also by the letter of Clay, before referred to.

The testimony, to which I have thus briefly referred, shows, by the letter of his agents, of the 13th of October, that Davis had before directed those agents to set his friends to work. By the letter of Clay it seems that his direction had been obeyed, and his friends had been set to work, in the burning and robbery and murder at St. Albans, in the attempt to burn the city of New York, and in the attempt to introduce pestilence into this capital and into the house of the President. It having appeared, by the letter of Alston, and the indorsement thereon, that Davis had in November entertained the proposition of sending agents, that is to say, "friends," to the north to not only "spread terror and consternation among the people" by means of his "chemical preparations," but also, in the words of that letter, "to strike," by the hands of assassins, "at the heart's blood" of the deadliest enemies in the north to the confederacy of traitors; it has also appeared by the testimony of many respectable witnesses, among others the attorneys who represented the people of the United States and the State of Vermont, in the preliminary trial of the raiders in Canada, that Clay, Thompson, Tucker, Sanders and Cleary declared themselves the agents of the confederacy. It also clearly appears by the correspondence referred to, and the letter of Clay, that they were holding, and at any time able to command, blank commissions from Jefferson Davis to authorize their friends to do whatever work they appointed them to do, in the interests of the rebellion, by the destruction of life and property in the north.

If a *prima facie* case justifies, as we have seen by the law of evidence it does, the introduction of all declarations and acts of any of the parties to a conspiracy, uttered or done in the prosecution of the common design, as evidence against all the rest, it results, that whatever was said or done in furtherance of the common design, after this month of October, 1864, by either of these agents in Canada, is evidence

not only against themselves, but against Davis as well, of his complicity with them in the conspiracy.

Mr. Montgomery testifies that he met Jacob Thompson in January, at Montreal, when he said that "a proposition had been made to him to rid the world of the tyrant Lincoln, Stanton, Grant and some others; that he knew the men who had made the proposition were bold, daring men, able to execute what they undertook; that he himself was in favor of the proposition, but had determined to defer his answer until he had consulted his government at Richmond; that he was then only awaiting their approval." This was about the middle of January, and consequently more than a month after Alston had made his proposition direct to Davis, in writing, to go north and rid their confederacy of some of its "deadliest enemies." It was at the time of this conversation that Payne, the prisoner, was seen by the witness standing at Thompson's door in conversation with Clay. This witness also shows the intimacy between Thompson, Clay, Cleary, Tucker and Sanders.

A few days after the assassination of the President, Beverly Tucker said to this witness "that President Lincoln deserved his death long ago; that it was a pity he didn't have it long ago, and it was too bad that the boys had not been allowed to act when they wanted to."

This remark undoubtedly had reference to the propositions made in the fall to Thompson, and also to Davis, to rid the south of its deadliest enemies by their assassination. Cleary, who was accredited by Thompson as his confidential agent, also stated to this witness that Booth was one of the party to whom Thompson had referred in the conversation in January, in which he said he knew the men who were ready to rid the world of the tyrant Lincoln, and of Stanton and Grant. Cleary also said, speaking of the assassination, "that it was a pity that the whole work had not been done," and added, "they had better look out—we are not done yet;" manifestly referring to the statement made by his employer, Thompson, before in the summer, that not only the tyrant

Lincoln, but Stanton and Grant, and others of his advisers, should be put out of the way. Cleary also stated to this witness that Booth had visited Thompson twice in the winter, the last time in December, and had also been there in the summer.

Sanford Conover testified that he had been for some time a clerk in the war department at Richmond; that in Canada he knew Thompson, Sanders, Cleary, Tucker, Clay and other rebel agents; that he knew John H. Surratt and John Wilkes Booth; that he saw Booth there upon one occasion, and Surratt upon several successive days; that he saw Surratt (whom he describes) in April last, in Thompson's room, and also in company with Sanders; that about the 6th or 7th of April Surratt delivered to Jacob Thompson a dispatch brought by him from Benjamin at Richmond, enclosing one in cipher from Davis. Thompson had before this proposed to Conover to engage in a plot to assassinate President Lincoln and his cabinet, and on this occasion he laid his hand upon these dispatches and said, "This makes the thing all right," referring to the assent of the rebel authorities, and stated that the rebel authorities had consented to the plot to assassinate Lincoln, Johnson, the Secretary of War, Secretary of State, Judge Chase and General Grant. Thompson remarked further that the assassination of these parties would leave the government of the United States entirely without a head; that there was no provision in the Constitution of the United States by which they could elect another President, if these men were put out of the way.

In speaking of this assassination of the President and others, Thompson said that it was only removing them from office, that the killing of a tyrant was no murder. It seems that he had learned precisely the same lesson that Alston had learned in November, when he communicated with Davis, and said, speaking of the President's assassination, "he did not think anything dishonorable that would serve their cause." Thompson stated at the same time that he had conferred a commission on Booth, and that everybody engaged in the en-

terprise would be commissioned, and if it succeeded, or failed, and they escaped into Canada, they could not be reclaimed under the extradition treaty. The fact that Thompson and other rebel agents held blank commissions, as I have said, has been proved, and a copy of one of them is of record here.

This witness also testifies to a conversation with William C. Cleary, shortly after the surrender of Lee's army, and on the day before the President's assassination, at the St. Lawrence hotel, Montreal, when speaking of the rejoicing in the States over the capture of Richmond, Cleary said, "they would put the laugh on the other side of their mouth in a day or two." These parties knew that Conover was in the secret of the assassination, and talked with him about it as freely as they would speak of the weather. Before the assassination he had a conversation also with Sanders, who asked him if he knew Booth well, and expressed some apprehension that Booth would "make a failure of it; that he was desperate and reckless, and he was afraid the whole thing would prove a failure."

Dr. James D. Merritt testifies that George Young, one of the parties named in the record, declared in his presence, in Canada, last fall, that Lincoln should never be inaugurated; that they had friends in Washington, who, I suppose, were some of the same friends referred to in the dispatch of October 13, and which Davis had directed them "to set to work." George N. Sanders also said to him "that Lincoln would keep himself mighty close if he did serve another term;" while Steele and other confederates declared that the tyrant never should serve another term. He heard the assassination discussed at a meeting of these rebel agents in Montreal in February last. "Sanders said they had plenty of money to accomplish the assassination, and named over a number of persons who were ready and willing to engage in undertaking to remove the President, Vice-President, the cabinet, and some of the leading generals. At this meeting he read a letter which he had received from Davis, which justified him in making any arrangements that he could to

accomplish the object." This letter the witness heard read, and it, in substance, declared that if the people in Canada and the southerners in the States were willing to submit to be governed by such a tyrant as Lincoln, he didn't wish to recognize them as friends. The letter was read openly; it was also handed to Colonel Steele, George Young, Hill and Scott, to be read. This was about the middle of February last. At this meeting Sanders named over the persons who were willing to accomplish the assassination, and among the persons thus named was Booth, whom the witness had seen in Canada in October; also George Harper, one of the conspirators named on the record, Caldwell, Randall, Harrison and Sur-ratt.

The witness understood, from the reading of the letter, that if the President, Vice-President and cabinet could be disposed of it would satisfy the people of the north that the southerners had friends in the north; that a peace could be obtained on better terms; that the rebels had endeavored to bring about a war between the United States and England, and that Mr. Seward, through his energy and sagacity, had thwarted all their efforts; that was given as a reason for removing him. On the 5th or 6th of last April this witness met George Harper, Caldwell, Randall and others, who are spoken of in this meeting at Montreal as engaged to assassinate the President and cabinet, when Harper said they were going to the States to make a row such as had never been heard of, and added that "if I (the witness) did not hear of the death of Old Abe, of the Vice-President, and of General Dix in less than ten days, I might put him down as a fool. That was on the 6th of April. He mentioned that Booth was in Washington at that time. He said they had plenty of friends in Washington, and that some fifteen or twenty were going."

This witness ascertained, on the 8th of April, that Harper and others had left for the States. The proof is that these parties could come through to Washington from Montreal or Toronto in thirty-six hours. They did come, and within the ten days named by Harper the President was murdered!

Some attempts have been made to discredit this witness (Dr. Merritt), not by the examination of witnesses in court, not by any apparent want of truth in the testimony, but by the *ex parte* statements of these rebel agents in Canada and their hired advocates in the United States. There is a statement upon the record, verified by an official communication from the War Department, which shows the truthfulness of this witness, and that is, that before the assassination, learning that Harper and his associates had started for the States, informed as he was of their purpose to assassinate the President, cabinet and leading generals, Merritt deemed it his duty to call, and did call, on the 10th of April, upon a justice of the peace in Canada, named Davidson, and gave him the information, that he might take steps to stop these proceedings. The correspondence on this subject with Davidson has been brought into court. Dr. Merritt testifies, further, that after this meeting in Montreal he had a conversation with Clement C. Clay, in Toronto, about the letter from Jefferson Davis which Sanders had exhibited, in which conversation Clay gave the witness to understand that he knew the nature of the letter perfectly, and remarked that he thought "the end would justify the means." The witness also testifies to the presence of Booth with Sanders in Montreal last fall, and of Surratt in Toronto in February last.

The court must be satisfied, by the manner of this and other witnesses to the transactions in Canada, as well as by the fact that they are wholly uncontradicted in any material matter that they state, that they speak the truth, and that the several parties named on your record, Davis, Thompson, Cleary, Tucker, Clay, Young, Harper, Booth and John H. Surratt did combine and conspire together in Canada to kill and murder Abraham Lincoln, Andrew Johnson, William H. Seward and Ulysses S. Grant. That this agreement was substantially entered into by Booth and the agents of Davis in Canada as early as October there cannot be any doubt. The language of Thompson at that time and before was, that he was in favor of the assassination. His further

language was, that he knew the men who were ready to do it; and Booth, it is shown, was there at that time, and, as Thompson's secretary says, was one of the men referred to by Thompson.

The fact that others, besides the parties named on the record, were, by the terms of the conspiracy, to be assassinated, in nowise affects the case now on trial. If it is true that these parties did conspire to murder other parties, as well as those named upon the record, the substance of the charge is proved.

It is also true that if, in pursuance of that conspiracy, Booth, confederated with Surratt and the accused, killed and murdered Abraham Lincoln, the charge and specification is proved literally as stated on your record, although their conspiracy embraced other persons. In law the case stands, though it may appear that the conspiracy was to kill and murder the parties named in the record and others not named in the record. If the proof is that the accused, with Booth, Surratt, Davis, etc., conspired to kill and murder one or more of the persons named, the charge of conspiracy is proved.

The declaration of Sanders, as proved, that there was plenty of money to carry out this assassination, is very strongly corroborated by the testimony of Mr. Campbell, cashier of the Ontario Bank, who states that Thompson, during the current year preceding the assassination, had upon deposit in the Montreal branch of the Ontario Bank six hundred and forty-nine thousand dollars, besides large sums to his credit in other banks in the province.

There is a further corroboration of the testimony of Conover as to the meeting of Thompson and Surratt in Montreal, and the delivery of the dispatches from Richmond, on the 6th or 7th of April, first, in the fact which is shown by the testimony of Chester, that in the winter or spring Booth said he himself or some other party must go to Richmond, and, second, by the letter of Arnold dated 27th of March last, that he preferred Booth's first query, that he would first go to Richmond and see how they would take it, manifestly alluding to the proposed assassination of the President. It

does not follow because Davis had written a letter in February which, in substance, approved the general object, that the parties were fully satisfied with it; because it is clear there was to be some arrangement made about the funds; and it is also clear that Davis had not before as distinctly approved and sanctioned this act as his agents either in Canada or here desired. Booth said to Chester, "We must have money; there is money in this business, and if you will enter into it I will place three thousand dollars at the disposal of your family; but I have no money myself, and must go to Richmond," or one of the parties must go, "to get money to carry out the enterprise." This was one of the arrangements that was to be "made right in Canada." The funds at Thompson's disposal, as the banker testifies, were exclusively raised by drafts of the secretary of the treasury of the Confederate States upon London, deposited in their bank to the credit of Thompson.

Accordingly, about the 27th of March, Surratt did go to Richmond. On the 3d of April he returned to Washington, and the same day left for Canada. Before leaving, he stated to Weichmann that when in Richmond he had had a conversation with Davis and with Benjamin. The fact in this connection is not to be overlooked, that on or about the day Surratt arrived in Montreal, April 6, Jacob Thompson, as the cashier of the Ontario Bank states, drew of these confederate funds the sum of one hundred and eighty thousand dollars in the form of certificates, which, as the bank officer testifies, "might be used anywhere."

What more is wanting? Surely no word further need be spoken to show that John Wilkes Booth was in this conspiracy; that John H. Surratt was in this conspiracy; and that Jefferson Davis and his several agents named, in Canada, were in this conspiracy. If any additional evidence is wanting to show the complicity of Davis in it, let the paper found in the possession of his hired assassin Booth come to bear witness against him. That paper contained the secret cipher which Davis used in his state department at Richmond, which

he employed in communicating with his agents in Canada, and which they employed in the letter of October 13, notifying him that "their friends would be set to work as he had directed." The letter in cipher found in Booth's possession is translated here by the use of the cipher machine now in court, which, as the testimony of Mr. Dana shows, he brought from the rooms of Davis' state department in Richmond. Who gave Booth this secret cipher? Of what use was it to him if he was not in confederation with Davis?

But there is one other item of testimony that ought, among honest and intelligent people at all conversant with this evidence, to end all further inquiry as to whether Jefferson Davis was one of the parties, with Booth, as charged upon this record, in the conspiracy to assassinate the President and others. That is, that on the fifth day after the assassination, in the city of Charlotte, North Carolina, a telegraphic dispatch was received by him, at the house of Mr. Bates, from John C. Breckinridge, his rebel secretary of war, which dispatch is produced here, identified by the telegraph agent, and placed upon your record in the words following:

"Greensboro', April 19, 1865.

"His Excellency President Davis:

"President Lincoln was assassinated in the theater in Washington on the night of the 14th inst. Seward's house was entered on the same night and he was repeatedly stabbed, and is probably mortally wounded.

John C. Breckinridge."

At the time this despatch was handed to him, Davis was addressing a meeting from the steps of Mr. Bates' house, and after reading the dispatch to the people he said: "If it were to be done, it were better it were well done." Shortly afterwards, in the house of the witness, in the same city, Breckinridge, having come to see Davis, stated his regret that the occurrence had happened, because he deemed it unfortunate for the people at the South at that time. Davis replied, referring to the assassination, "Well, general, I don't know; if it were to be done at all, it were better that it were well done; and if the same had been done to Andy Johnson,

the beast, and to Secretary Stanton, the job would then be complete."

Accomplished as this man was in all the arts of a conspirator, he was not equal to the task—as happily, in the good providence of God, no mortal man is—of concealing, by any form of words, any great crime which he may have meditated or perpetrated either against his government or his fellow-men. It was doubtless furthest from Jefferson Davis' purpose to make confession, and yet he did make a confession. His guilt demanded utterance; that demand he could not resist; therefore his words proclaimed his guilt, in spite of his purpose to conceal it. He said, "if it were to be done, it were better it were well done." Would any man ignorant of the conspiracy be able to devise and fashion such a form of speech as that? Had not the President been murdered? Had he not reason to believe that the Secretary of State had been mortally wounded? Yet he was not satisfied, but was compelled to say, "it were better it were well done"—that is to say, all that had been agreed to be done had not been done. Two days afterwards, in his conversation with Breckinridge, he not only repeats the same form of expression, "if it were to be done it were better it were well done," but adds these words: "And if the same had been done to Andy Johnson, the beast, and to Secretary Stanton, the job would then be complete." He would accept the assassination of the President, the Vice-President, of the Secretary of State and the Secretary of War, as a complete execution of the "job," which he had given out upon contract, and which he had "made all right," so far as the pay was concerned, by the dispatches he had sent to Thompson by Surratt, one of his hired assassins. Whatever may be the conviction of others, my own conviction is that Jefferson Davis is as clearly proven guilty of this conspiracy as is John Wilkes Booth, by whose hand Jefferson Davis inflicted the mortal wound upon Abraham Lincoln. His words of intense hate, and rage, and disappointment are not to be overlooked—that the assassins had not done their work well; that they had not succeeded in rob-

bing the people altogether of their constitutional Executive and his advisers; and hence he exclaims, "If they had killed Andy Johnson, the beast!" Neither can he conceal his chagrin and disappointment that the War Minister of the republic, whose energy, incorruptible integrity, sleepless vigilance and executive ability had organized day by day, month by month, and year by year, victory for our arms, had escaped the knife of the hired assassins. The job, says this procurer of assassination, was not well done; it had been better if it had been well done! Because Abraham Lincoln had been clear in his great office, and had saved the nation's life by enforcing the nation's laws, this traitor declares he must be murdered; because Mr. Seward, as the foreign secretary of the country, had thwarted the purposes of treason to plunge his country into a war with England, he must be murdered; because, upon the murder of Mr. Lincoln, Andrew Johnson would succeed to the presidency, and because he had been true to the Constitution and government, faithful found among the faithless of his own State, clinging to the falling pillars of the republic when others had fled, he must be murdered; and because the Secretary of War had taken care, by the faithful discharge of his duties, that the republic should live and not die, he must be murdered. Inasmuch as these two faithful officers were not also assassinated, assuming that the Secretary of State was mortally wounded, Davis could not conceal his disappointment and chagrin that the work was not "well done," that "the job was not complete!"

Thus it appears by the testimony that the proposition made to Davis was to kill and murder the deadliest enemies of the confederacy—not to kidnap them, as is now pretended here; that by the declaration of Sanders, Tucker, Thompson, Clay, Cleary, Harper and Young, the conspirators in Canada, the agreement and combination among them was to kill and murder Abraham Lincoln, William H. Seward, Andrew Johnson, Ulysses S. Grant, Edwin M. Stanton, and others of his advisers, and not to kidnap them; it appears from every utterance of John Wilkes Booth, as well as from the Charles

Selby letter, of which mention will presently be made, that, as early as November, the proposition with him was to kill and murder, not to kidnap.

Since the first examination of Conover, who testified, as the court will remember, to many important facts against these conspirators and agents of Davis in Canada—among others, the terrible and fiendish plot disclosed by Thompson, Pallen and others, that they had ascertained the volume of water in the reservoir supplying New York City, estimated the quantity of poison required to render it deadly, and intended thus to poison a whole city—Conover returned to Canada, by direction of this court, for the purpose of obtaining certain documentary evidence. There, about the 9th of June, he met Beverley Tucker, Sanders, and other conspirators, and conversed with them. Tucker declared that Secretary Stanton, whom he denounced as “a scoundrel,” and Judge Holt, whom he called “a bloodthirsty villain,” “could protect themselves as long as they remained in office by a guard, but that would not always be the case, and, by the Eternal, he had a large account to settle with them.” After this, the evidence of Conover here having been published, these parties called upon him and asked him whether he had been to Washington, and had testified before this court. Conover denied it; they insisted, and took him to a room, where, with drawn pistols, they compelled him to consent to make an affidavit that he had been falsely personated here by another, and that he would make that affidavit before a Mr. Kerr, who would witness it. They then called in Mr. Kerr to certify to the public that Conover had made such a denial. They also compelled this witness to furnish for publication an advertisement offering a reward of five hundred dollars for the arrest of the “infamous and perjured scoundrel” who had recently personated James W. Wallace under the name of Sanford Conover, and testified to a tissue of falsehoods before the military commission at Washington, which advertisement was published in the papers.

To these facts Mr. Conover now testifies, and also discloses the fact that these same men published, in the report of the proceedings before Judge Smith, an affidavit purporting to be his, but which he never made. The affidavit which he in fact made, and which was published in a newspaper at that time, produced here, is set out substantially upon your record, and agrees with the testimony upon the same point given by him in this court.

To suppose that Conover ever made such an affidavit voluntarily as the one wrung from him as stated is impossible. Would he advertise for his own arrest and charge himself with falsely personating himself? But the fact cannot evade observation, that when these guilty conspirators saw Conover's testimony before this court in the public prints, revealing to the world the atrocious plots of these felon conspirators, conscious of the truthfulness of his statements, they cast about at once for some defense before the public, and devised the foolish and stupid invention of compelling him to make an affidavit that he was not Sanford Conover, was not in this court, never gave this testimony, but was a practicing lawyer in Montreal! This infamous proceeding, coupled with the evidence before detailed, stamps these ruffian plotters with the guilt of this conspiracy.

John Wilkes Booth having entered into this conspiracy in Canada, as has been shown, as early as October, he is next found in the city of New York on the 11th day, as I claim, of November, in disguise, in conversation with another, the conversation disclosing to the witness, Mrs. Hudspeth, that they had some matter of personal interest between them; that upon one of them the lot had fallen to go to Washington—upon the other to go to Newbern. This witness, upon being shown the photograph of Booth, swears "that the face is the same" as that of one of those men, who she says was a young man of education and culture, as appeared by his conversation, and who had a scar like a bite near the jaw-bone. It is a fact proved here by the Surgeon General that Booth had such a scar on the side of his neck. Mrs. Hudspeth

heard him say he would leave for Washington the day after tomorrow. His companion appeared angry because it had not fallen on him to go to Washington. This took place after the presidential election in November. She cannot fix the precise date, but says she was told that General Butler left New York on that day. The testimony discloses that General Butler's army was on the 11th of November leaving New York. The register of the National Hotel shows that Booth left Washington on the early morning train, November 11, and that he returned to this city on the 14th. Chester testifies positively to Booth's presence in New York early in November. This testimony shows most conclusively that Booth was in New York on the 11th of November. The early morning train on which he left Washington would reach New York early in the afternoon of that day. Chester saw him there early in November, and Mrs. Hudspeth not only identifies his picture, but describes his person. The scar upon his neck near his jaw was peculiar and is well described by the witness as like a bite. On that day Booth had a letter in his possession which he accidentally dropped in the street car in the presence of Mrs. Hudspeth, the witness, who delivered it to Major General Dix the same day, and by whom, as his letter on file before this court shows, the same was transmitted to the War Department November 17, 1864. That letter contains these words:

"Dear Louis: The time has at last come that we have all so wished for, and upon you everything depends. As it was decided, before you left, we were to cast lots, we accordingly did so, and you are to be the Charlotte Corday of the 19th century. When you remember the fearful solemn vow that was taken by us, you will feel there is no drawback. Abe must die, and now. You can choose your weapons—the cup, the knife, the bullet. The cup failed us once, and might again. Johnson, who will give this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. . . . You know where to find your friends. Your disguises are so perfect and complete that without one knew your face, no police telegraphic dispatch would catch you. The English gentleman, Harcourt, must not act hastily. Remember he has ten days. Strike for your home, strike for your country; bide your time, but strike

sure. Get introduced; congratulate him; listen to his stories (not many more will the brute tell to earthly friends); do anything but fail, and meet us at the appointed place within the fortnight. You will probably hear from me in Washington. Sanders is doing us no good in Canada.

Chas. Selby."

The learned gentleman (Mr. Cox) in his very able and carefully considered argument in defense of O'Laughlin and Arnold, attached importance to this letter, and doubtless very clearly saw its bearing upon the case, and therefore undertook to show that the witness, Mrs. Hudspeth, must be mistaken as to the person of Booth. The gentleman assumes that the letter of General Dix, of the 17th of November last, transmitting this letter to the War Department, reads that the party who dropped the letter was heard to say that he would start to Washington on Friday night next, although the word "next" is not in the letter, neither is it in the quotation which the gentleman makes, for he quotes it fairly; yet he concludes that this would be the 18th of November.

Now the fact is, the 11th of November last was Friday, and the register of the National Hotel bears witness that Mrs. Hudspeth is not mistaken; because her language is, that Booth said he would leave for Washington day after tomorrow, which would be Sunday, the 13th, and if in the evening, would bring him to Washington on Monday, the 14th of November, the day on which, the register shows, he did return to the National Hotel. As to the improbability which the gentleman raises, on the conversation happening in a street car, crowded with people, there was nothing that transpired, although the conversation was earnest, which enabled the witness, or could have enabled any one, in the absence of this letter, or of the subsequent conduct of Booth, to form the least idea of the subject-matter of their conversation. The gentleman does not deal altogether fairly in his remarks touching the letter of General Dix; because, upon a careful examination of the letter, it will be found that he did not form any such judgment as that it was a hoax for

the Sunday Mercury, but he took care to forward it to the Department, and asked attention to it; when, as appears by the testimony of the Assistant Secretary of War, Mr. Dana, the letter was delivered to Mr. Lincoln, who considered it important enough to indorse it with the word "Assassination," and file it in his office, where it was found after the commission of this crime, and brought into this court to bear witness against his assassins.

Although this letter would imply that the assassination spoken of was to take place speedily, yet the party was to bide his time. Though he had entered into the preliminary arrangements in Canada, although conspirators had doubtless agreed to co-operate with him in the commission of the crime, and lots had been cast for the chief part in the bloody drama, yet it remained for him, as the leader and principal of the hired assassins, by whose hand their employers were to strike the murderous blow, to collect about him and bring to Washington such persons as would be willing to lend themselves for a price to the horrid crime and likely to give the necessary aid and support in its consummation. The letter declares that Abraham Lincoln must die, and now, meaning as soon as the agents can be employed and the work done. To that end you will bide your time. But, says the gentleman, it could not have been the same conspiracy charged here to which this letter refers. Why not? It is charged here that Booth with the accused and others conspired to kill and murder Abraham Lincoln—that is precisely the conspiracy disclosed in the letter. Granted that the parties on trial had not then entered into the combination; if they at any time afterward entered into it they became parties to it, and the conspiracy was still the same. But, says the gentleman, the words of the letter imply that the conspiracy was to be executed within the fortnight. Booth is directed, by the name of Louis, to meet the writer within the fortnight. It by no means follows that he was to strike within the fortnight, because he was to meet his co-conspirator within that time, and any such

conclusion is excluded by the words "Bide your time." Even if the conspiracy was to be executed within the fortnight, and was not so executed, and the same party, Booth, afterwards by concert and agreement with the accused and others did execute it by "striking sure" and killing the President, that act, whenever done, would be but the execution of the same conspiracy. The letter is conclusive evidence of so much of this conspiracy as relates to the murder of President Lincoln. As Booth was to do anything but fail, he immediately thereafter sought out the agents to enable him to strike sure, and execute all that he had agreed with Davis and his co-confederates in Canada to do—to murder, the President, the Secretary of State, the Vice-President, General Grant, and Secretary Stanton.

Even Booth's co-conspirator, Payne, now on his trial, by his defense admits all this, and says Booth had just been to Canada, "was filled with a mighty scheme, and was lying in wait for agents." Booth asked the co-operation of the prisoner Payne, and said: "I will give you as much money as you want; but first you must swear to stick by me. It is in the oil business." This you are told by the accused was early in March last. Thus guilt bears witness against itself.

We find Booth in New York in November, December, and January, urging Chester to enter into this combination, assuring him that there was money in it; that they had "friends on the other side;" that if he would only participate in it he would never want for money while he lived, and all that was asked of him was to stand at and open the back door of Ford's theater. Booth, in his interviews with Chester, confesses that he is without money himself, and allows Chester to reimburse him the \$50 which he (Booth) had transmitted to him in a letter for the purpose of paying his expenses to Washington as one of the parties to this conspiracy. Booth told him, although he himself was penniless, "there is money in this—we have friends on the other side;" and if you will but engage, I will have three

thousand dollars deposited at once for the use of your family. family.

DR. SAMUEL A. MUDD.

Failing to secure the services of Chester, because his soul recoiled with abhorrence from the foul work of assassination and murder, he found more willing instruments in others whom he gathered about him. Men to commit the assassinations, horses to secure speedy and certain escape, were to be provided, and to this end Booth, with an energy worthy of a better cause, applies himself. For this latter purpose he told Chester he had already expended \$5,000. In the latter part of November, 1864, he visited Charles county, Maryland, and in company with one of the prisoners, Dr. Samuel A. Mudd, with whom he lodged over night, and through whom he procures of Gardner one of the several horses which were at his disposal, and used by him and his co-conspirators in Washington on the night of the assassination.

Some time in January last, it is in testimony, that the prisoner Mudd introduced Booth to John H. Surratt and the witness Weichmann; that Booth invited them to the National Hotel; that when there, in the room to which Booth took them, Mudd went out into the passage, called Booth out and had a private conversation with him, leaving the witness and Surratt in the room. Upon their return to the room Booth went out with Surratt, and upon their coming in all three, Booth, Surratt and Samuel A. Mudd, went out together and had a conversation in the passage, leaving the witness alone. Up to the time of this interview it seems that neither the witness nor Surratt had any knowledge of Booth, as they were then introduced to him by Dr. Mudd. Whether Surratt had in fact previously known Booth it is not important to inquire. Mudd deemed it necessary, perhaps a wise precaution, to introduce Surratt to Booth; he also deemed it necessary to have a private conversation with Booth shortly afterwards, and directly up-

on that to have a conversation together with Booth and Surratt alone. Had this conversation, no part of which was heard by the witness, been perfectly innocent, it is not to be presumed that Dr. Mudd, who was an entire stranger to Weichmann, would have deemed it necessary to hold the conversation secretly, nor to have volunteered to tell the witness, or rather pretend to tell him, what the conversation was; yet he did say to the witness, upon their return to the room, by way of apology, I suppose, for the privacy of the conversation, that Booth had some private business with him, and wished to purchase his farm. This silly device, as is often the case in attempts at deception, failed in the execution; for it remains to be shown how the fact that Mudd had private business with Booth, and that Booth wished to purchase his farm, made it at all necessary or even proper that they should both volunteer to call out Surratt, who up to that moment was a stranger to Booth. What had Surratt to do with Booth's purchase of Mudd's farm? And if it was necessary to withdraw and talk by themselves secretly about the sale of the farm, why should they disclose the fact to the very man from whom they had concealed it?

Upon the return of these three parties to the room, they seated themselves at a table, and upon the back of an envelope Booth traced lines with a pencil, indicating, as the witness states, the direction of roads. Why was this done? As Booth had been previously in that section of country, as the prisoner in his defense has taken great pains to show, it was certainly not necessary to anything connected with the purchase of Mudd's farm that at that time he should be indicating the direction of roads to or from it; nor is it made to appear, by anything in this testimony, how it comes that Surratt, as the witness testifies, seemed to be as much interested in the marking out of these roads as Mudd or Booth. It does not appear that Surratt was in anywise connected with or interested in the sale of Mudd's farm. From all that has transpired since this meeting at the hotel, it would seem that this plotting the roads was intended, not

so much to show the road to Mudd's farm, as to point out the shortest and safest route for flight from the capital, by the houses of all the parties to this conspiracy, to their "friends on the other side."

But, says the learned gentleman (Mr. Ewing) in his very able argument in defense of this prisoner, why should Booth determine that his flight should be through Charles county? The answer must be obvious upon a moment's reflection, to every man, and could not possibly have escaped the notice of the counsel himself, but for the reason that his zeal for his client constrained him to overlook it. It was absolutely essential that this murderer should have his co-conspirators at convenient points along his route, and it does not appear in evidence that by the route to his friends, who had then fled from Richmond, which the gentleman (Mr. Ewing) indicates as the more direct, but of which there is not the slightest evidence whatever, Booth had co-conspirators at an equal distance from Washington. The testimony discloses, further, that on the route selected by him for his flight there is a large population that would be most likely to favor and aid him in the execution of his wicked purpose, and in making his escape. But it is a sufficient answer to the gentleman's question, that Booth's co-conspirator Mudd lived in Charles county.

To return to the meeting at the hotel. In the light of other facts in this case, it must become clear to the court that this secret meeting between Booth, Surratt, and Mudd was a conference looking to the execution of this conspiracy. It so impressed the prisoner, it so impressed his counsel, that they deemed it necessary and absolutely essential to their defense to attempt to destroy the credibility of the witness Weichmann.

I may say here, in passing that they have not attempted to impeach his general reputation for truth by the testimony of a single witness, nor have they impeached his testimony by calling a single witness to discredit one material fact to which he has testified in this issue. Failing to find

a breath of suspicion against Weichmann's character, or to contradict a single fact to which he testified, the accused had to fly to the last resort, an alibi, and very earnestly did the learned counsel devote himself to the task.

It is not material whether this meeting in the hotel took place on the 23d of December or in January. But, says the counsel, it was after the commencement or close of the Congressional holiday. That is not material; but the concurrent resolution of Congress shows that the holiday commenced on the 22d December, the day before the accused spent the evening in Washington. The witness is not certain about the date of this meeting. The material fact is, did this meeting take place—either on the 23d of December or in January last? Were the private interviews there held, and was the apology made, as detailed, by Mudd and Booth, after the secret conference, to the witness? That the meeting did take place, and that Mudd did explain that these secret interviews, with Booth first, and with Booth and Surratt directly afterward, had relation to the sale of his farm, is confessedly admitted by the endeavor of the prisoner, through his counsel, to show that negotiations had been going on between Booth and Mudd for the sale of Mudd's farm. If no such meeting was held, if no such explanation was made by Mudd to Weichmann, can any man for a moment believe that a witness would have been called here to give any testimony about Booth having negotiated for Mudd's farm? What conceivable connection has it with this case, except to show that Mudd's explanation to Weichmann for his extraordinary conduct was in exact accordance with the fact? Or was this testimony about the negotiations for Mudd's farm intended to show so close an intimacy and intercourse with Booth that Mudd could not fail to recognize him when he came flying for aid to his house from the work of assassination? It would be injustice to the able counsel to suppose that.

I have said that it was wholly immaterial whether this conversation took place on the 23d of December or in Jan-

uary; it is in evidence that in both these months Booth was at the National Hotel; that he occupied a room there; that he arrived there on the 22d and was there on the 23d of December last, and also on the 12th day of January. The testimony of the witness is, that Booth said he had just come in. Suppose this conversation took place in December, on the evening of the 23d, the time when it is proved by J. T. Mudd, the witness for the accused, that he, in company with Samuel A. Mudd, spent the night in Washington City. Is there anything in the testimony of that or any other witness to show that the accused did not have and could not have had an interview with Booth on that evening? J. T. Mudd testifies that he separated from the prisoner, Samuel A. Mudd, at the National Hotel early in the evening of that day, and did not meet him again until the accused came in for the night at the Pennsylvania House, where he stopped. Where was Dr. Samuel A. Mudd during this interval? What does his witness know about him during that time? How can he say that Dr. Mudd did not go up on Seventh street in company with Booth, then at the National; that he did not on Seventh street meet Surratt and Weichmann; that he did not return to the National Hotel; that he did not have this interview, and afterwards meet him, the witness, as he testifies, at the Pennsylvania House? Who knows that the Congressional holiday had not in fact commenced on that day? What witness has been called to prove that Booth did not on either of those occasions occupy the room that had formerly been occupied by a member of Congress, who had temporarily vacated it, leaving his books there? Weichmann, I repeat, is not positive as to the date, he is only positive as to the fact; and he disclosed voluntarily, to this court, that the date could probably be fixed by a reference to the register of the Pennsylvania House; that register cannot, of course, be conclusive of whether Mudd was there in January or not, for the very good reason that the proprietor admits that he did not know Samuel A. Mudd, therefore Mudd might have registered by

any other name. Weichmann does not pretend to know that Mudd had registered at all. If Mudd was here in January, as a party to this conspiracy, it is not at all unlikely that, if he did register at that time in the presence of a man to whom he was wholly unknown, his kinsman not then being with him, he would register by a false name. But if the interview took place in December, the testimony of Weichmann bears as strongly against the accused as if it had happened in January. Weichmann says he does not know what time was occupied in this interview at the National Hotel; that it probably lasted twenty minutes; that, after the private interviews between Mudd and Surratt and Booth, which were not of very long duration, had terminated, the parties went to the Pennsylvania House, where Dr. Mudd had rooms, and after sitting together in the common sitting-room of the hotel, they left Dr. Mudd there about 10 o'clock p. m., who remained during the night. Weichmann's testimony leaves no doubt that this meeting on Seventh street and interview at the National took place after dark, and terminated before or about 10 o'clock p. m. His own witness, J. T. Mudd, after stating that he separated from the accused at the National Hotel, says after he had got through a conversation with a gentleman of his acquaintance, he walked down the Avenue, went to several clothing stores, and "after a while" walked round to the Pennsylvania House, and "very soon after" he got there Dr. Mudd came in, and they went to bed shortly afterwards. What time he spent in his "walk alone" on the Avenue looking at clothing; what period he embraces in the terms "after a while," when he returned to the Pennsylvania House, and "soon after" which Dr. Mudd got there, the witness does not disclose. Neither does he intimate, much less testify that he saw Dr. Mudd when he first entered the Pennsylvania House on that night after their separation. How does he know that Booth and Surratt and Weichmann did not accompany Samuel A. Mudd to that house that evening? How does he know that the prisoner and those per-

sons did not converse together some time in the sitting-room of the Pennsylvania Hotel? Jeremiah Mudd has not testified that he met Doctor Mudd in that room, or that he was in it himself. He has, however, sworn to the fact, which is disproved by no one, that the prisoner was separated from him long enough that evening to have had the meeting with Booth, Surratt, and Weichmann, and the interviews in the National Hotel, and at the Pennsylvania House, to which Weichmann has testified? Who is there to disprove it? Of what importance is it whether it was on the 23d day of December or in January? How does that affect the credibility of Weichmann? He is a man, as I have before said, against whose reputation for truth and good conduct they have not been able to bring one witness. If this meeting did by possibility take place that night, is there anything to render it improbable that Booth, and Mudd, and Surratt did have the conversation at the National Hotel to which Weichmann testifies? Of what avail, therefore, is the attempt to prove that Mudd was not here during January, if it was clear that he was here on the 23d of December, 1864, and had this conversation with Booth? That this attempt to prove an alibi during January has failed, is quite as clear as is the proof of the fact that the prisoner was here on the evening of the 23d of December, and present in the National Hotel, where Booth stopped. The fact that the prisoner, Samuel A. Mudd, went with J. T. Mudd on that evening to the National Hotel, and there separated from him is proved by his own witness, J. T. Mudd; and that he did not rejoin him until they retired to bed in the Pennsylvania House is proved by the same witness, and contradicted by nobody. Does any one suppose there would have been such assiduous care to prove that the prisoner was with his kinsman all the time on the 23d of December in Washington, if they had not known that Booth was then at the National Hotel, and that a meeting of the prisoner with Booth, Surratt, and Weichmann on that day would corroborate and confirm Weichmann's testimony in every material statement he made concerning that meeting?

The accused having signally failed to account for his absence after he separated from his witness, J. T. Mudd, early in the evening of the 23d of December, at the National Hotel, until they had again met at the Pennsylvania House, when they retired to rest, he now attempts to prove an alibi as to the month of January. In this he has failed, as he failed in the attempt to show that he could not have met Surratt, and Weichmann on the 23d of December.

For this purpose the accused calls Betty Washington. She had been at Mudd's house every night since the Monday after Christmas last, except when here at court, and says that the prisoner, Mudd, has only been away from home three nights during that time. This witness forgets that Mudd has not been at home any night or day since this court assembled. Neither does she account for three nights in which she swears to his absence from home. First, she says he went to Gardner's party; second, he went to Giesboro, then to Washington. She does not know in what month he was away, the second time, all night. She only knows where he went, from what he and his wife said, which is not evidence; but she does testify that when he left home and was absent over night, the second time, it was about two or three weeks after she came to his house, which would, if it were three weeks, make it just about the 15th of January, 1865; because she swears she came to his house on the first Monday after Christmas last, which was the 26th day of December; so that the 15th of January would be three weeks, less one day, from that time; and it might have been a week earlier according to her testimony, as, also, it might have been a week earlier, or more, by Weichmann's testimony, for he is not positive as to the time. What I have said of the register of the Pennsylvania House, the headquarters of Mudd and Atzerodt, I need not here repeat. That record proves nothing, save that Dr. Mudd was there on the 23d of December, which, as we have seen, is a fact, along with others, to show that the meeting at the National then took place. I have also called the attention

of the court to the fact that if Mudd was at that house again in January, and did not register his name, that fact proves nothing; or, if he did, the register only proves that he registered falsely; either of which facts might have happened without the knowledge of the witness called by the accused from that house, who does not know Samuel A. Mudd personally.

The testimony of Henry L. Mudd, his brother, in support of this alibi, is, that the prisoner was in Washington on the 23d of March, and on the 10th of April, four days before the murder! But he does not account for the absent night in January, about which Betty Washington testifies. Thomas Davis was called for the same purpose, but stated that he was himself absent one night in January, after the 9th of the month, and he could not say whether Mudd was there on that night or not. He does testify to Mudd's absence over night three times, and fixes one occasion on the night of the 26th of January. In consequence of his own absence one night in January this witness cannot account for the absence of Mudd on the night referred to by Betty Washington.

This matter is entitled to no further attention. It can satisfy no one, and the burden of proof is upon the prisoner to prove that he was not in Washington in January last. How can such testimony convince any rational man that Mudd was not here in January, against the evidence of an unimpeached witness, who swears that Samuel A. Mudd was in Washington in the month of January? Who that has been examined here as a witness knows that he was not?

The Rev. Mr. Evans swears that he saw him in Washington last winter, and that at the same time he saw Jarboe, the one coming out of, and the other going into, a house on H street, which he was informed on inquiry was the house of Mrs. Surratt. Jarboe is the only witness called to contradict Mr. Evans, and he leaves it in extreme doubt whether he does not corroborate him, as he swears that he was here

himself last winter or fall, but cannot state exactly the time. Jarboe's silence on questions touching his own credibility leaves no room for any one to say that his testimony could impeach Mr. Evans, whatever he might swear.

Miss Anna H. Surratt is also called for the purpose of impeaching Mr. Evans. It is sufficient to say of her testimony on that point that she swears negatively only—that she did not see either of the persons named at her mother's house. This testimony neither disproves, nor does it even tend to disprove, the fact put in issue by Mr. Evans. No one will pretend, whatever the form of her expression in giving her testimony, that she could say more than that she did not know the fact, as it was impossible that she could know who was, or who was not, at her mother's house, casually, at a period so remote. It is not my purpose, neither is it needful here, to question in any way the integrity of this young woman.

It is further in testimony that Samuel A. Mudd was here on the 3d day of March last, the day preceding the inauguration, when Booth was to strike the traitorous blow; and it was, doubtless, only by the interposition of that God who stands within the shadow and keeps watch above his own, that the victim of this conspiracy was spared that day from the assassin's hand that he might complete his work and see the salvation of his country in the fall of Richmond and the surrender of its great army. Dr. Mudd was here on that day (the 3d of March) to abet, to encourage, to nerve his co-conspirator for the commission of this great crime. He was carried away by the awful purpose which possessed him, and rushed into the room of Mr. Norton at the National Hotel in search of Booth, exclaiming excitedly: "I'm mistaken; I thought this was Mr. Booth's room." He is told Mr. Booth is above, on the next floor. He is followed by Mr. Norton, because of his rude and excited behavior, and being followed, conscious of his guilty errand, he turns away, afraid of himself and afraid to be found in concert with his fellow con-

federate. Mr. Norton identifies the prisoner, and has no doubt that Samuel A. Mudd is the man.

The Rev. Mr. Evans also swears that, after the 1st and before the 4th day of March last, he is certain that within that time, and on the 2d or 3d of March, he saw Dr. Mudd drive into Washington city. The endeavor is made by the accused, in order to break down this witness, by proving another alibi. The sister of the accused, Miss Fanny Mudd, is called. She testifies that she saw the prisoner at breakfast in her father's house, on the 2d of March, about 5 o'clock in the morning, and not again until the 3d of March at noon. Mrs. Emily Mudd swears substantially to the same statement. Betty Washington, called for the accused, swears that he was at home all day at work with her on the 2d of March, and took breakfast at home. Frank Washington swears that Mudd was at home all day; that he saw him when he first came out in the morning about sunrise from his own house, and knows that he was there all day with them. Which is correct, the testimony of his sisters or the testimony of his servants? The sisters say that he was at their father's house for breakfast on the morning of the 2d of March; the servants say he was at home for breakfast with them on that day. If this testimony is followed, it proves one alibi too much. It is impossible, in the nature of things that the testimony of all these four witnesses can be true.

Seeing this weakness in the testimony brought to prove this second alibi, the endeavor is next made to discredit Mr. Norton for truth; and two witnesses, not more, are called, who testify that his reputation for truth has suffered by contested litigation between one of the impeaching witnesses and others. Four witnesses are called, who testify that Mr. Norton's reputation for truth is very good; that he is a man of high character for truth, and entitled to be believed whether he speaks under the obligation of an oath or not. The late Postmaster General, Hon. Horatio King, not only sustains Mr. Norton as a man of good reputation for truth, but expressly corroborates his testimony, by stating that in March

last, about the 4th of March, Mr. Norton told him the same fact to which he swears here: that a man came into his room under excitement, alarmed his sister, was followed out by himself, and went down stairs instead of going up; and that Mr. Norton told him this before the assassination, and about the time of the inauguration. What motive had Mr. Norton at that time to fabricate this statement? It detracts nothing from his testimony that he did not at that time mention the name of this man to his friend, Mr. King; because it appears from his testimony—and there is none to question the truthfulness of his statement—that at that time he did not know his name. Neither does it take from the force of this testimony, that Mr. Norton did not, in communicating this matter to Mr. King, make mention of Booth's name; because there was nothing in the transaction, at the time, he being ignorant of the name of Mudd, and equally ignorant of the conspiracy between Mudd and Booth, to give the least occasion for any mention of Booth or of the transaction further than as he detailed it. With such corroboration, who can doubt the fact that Mudd did enter the room of Mr. Norton, and was followed by him, on the 3d of March last? Can he be mistaken in the man? Whoever looks at the prisoner carefully once will be sure to recognize him again.

For the present I pass from the consideration of the testimony showing Dr. Mudd's connection with Booth in this conspiracy, with the remark that it is in evidence, and I think established, both by the testimony adduced by the prosecution and that by the prisoner, that since the commencement of this rebellion John H. Surratt visited the prisoner's house; that he concealed Surratt and other rebels and traitors in the woods near his house, where for several days he furnished them with food and bedding; that the shelter of the woods by night and by day was the only shelter that the prisoner dare furnish these friends of his; that in November Booth visited him and remained over night; that he accompanied Booth at that time to Gardner's, from whom he purchased one of the horses used on the night of the assassination to aid

the escape of one of his confederates; that the prisoner had secret interviews with Booth and Surratt, as sworn to by the witness Weichmann, in the National Hotel, whether on the 23d of December or in January is a matter of entire indifference; that he rushed into Mr. Norton's room on the 3d of March in search of Booth; and that he was here again on the 10th of April, four days before the murder of the President. Of his conduct after the assassination of the President, which is confirmatory of all this—his conspiring with Booth and his sheltering, concealing, and aiding the flight of his co-conspirator, this felon assassin—I shall speak hereafter, leaving him for the present with the remark that the attempt to prove his character has resulted in showing him in sympathy with the rebellion, so cruel that he shot one of his slaves and declared his purpose to send several of them to work on the rebel batteries in Richmond.

What others, besides Samuel A. Mudd and John H. Surratt and Lewis Payne, did Booth, after his return from Canada, induce to join him in this conspiracy to murder the President, the Vice-President, the Secretary of State, and the Lieutenant General, with the intent thereby to aid the rebellion and overthrow the government and laws of the United States?

O'LAUGHLIN AND ARNOLD.

On the 10th day of February the prisoners Arnold and O'Laughlin came to Washington and took rooms in the house of Mrs. Vantine; were armed; were there visited frequently by John Wilkes Booth, and alone; were occasionally absent when Booth called, who seemed anxious for their return—would sometimes leave notes for them, and sometimes a request that when they came in they should be told to come to the stable. On the 18th of March last, when Booth played in "The Apostate," the witness, Mrs. Vantine, received from O'Laughlin complimentary tickets. These persons remained there until the 20th of March. They were visited, so far as the witness knows, during their stay at her house only by

Booth, save that on a single occasion an unknown man came to see them, and remained with them over night. They told the witness they were in the "oil business." With Mudd, the guilty purpose was sought to be concealed by declaring that he was in the "land business;" with O'Laughlin and Arnold it was attempted to be concealed by the pretense that they were in the "oil business." Booth, it is proved, had closed up all connections with oil business last September. There is not a word of testimony to show that the accused, O'Laughlin and Arnold, ever invested or sought to invest, in any way or to any amount, in the oil business; their silly words betray them; they forgot when they uttered that false statement that truth is strong, next to the Almighty, and that their crime must find them out was the irrevocable and irresistible law of nature and of nature's God.

One of their co-conspirators, known as yet only to the guilty parties to this damnable plot and to the Infinite, who will unmask and avenge all blood-guiltiness, comes to bear witness, unwittingly, against them. This unknown conspirator, who dates his letter at South Branch Ridge, April 6, 1865, mailed and postmarked Cumberland, Maryland, and addressed to John Wilkes Booth, by his initials, "J. W. B., National Hotel, Washington, D. C.," was also in the "oil speculation." In that letter he says:

"Friend Wilkes: I received yours of March 12th, and reply as soon as practicable. I saw French, Brady, and others about the oil speculation. The subscription to the stock amounts to eight thousand dollars, and I add one thousand myself, which is about all I can stand. Now, when you sink your well, go deep enough; don't fail; everything depends upon you and your helpers. If you cannot get through on your trip after you strike oil, strike through Thornton gap and across by Capon, Romney, and down the Branch. I can keep you safe from all hardships for a year. I am clear of all surveillance now that infernal Purdy is beat. . . .

"I send this by Tom, and if he don't get drunk you will get it the 9th. At all events, it cannot be understood if lost. . . .

"No more, only Jake will be at Green's with the funds.

(Signed) "Lon."

That this letter is not a fabrication is made apparent by the testimony of Purdy, whose name occurs in the letter. He testi-

fied that he had been a detective in the government service, and that he had been falsely accused, as the letter recites, and put under arrest; that there was a noted rebel by the name of Green living at Thornton gap; that there was a servant, who drank, known as "Tom," in the neighborhood of South Branch Bridge; that there is an obscure route through the gap, and as described in the letter; and that a man commonly called "Lon" lives at South Branch Bridge. If the court are satisfied—and it is for them to judge—that this letter was written before the assassination, as it purports to have been, and on the day of its date, there can be no question with any one who reads it that the writer was in the conspiracy, and knew that the time of its execution drew nigh. If a conspirator, every word of its contents is evidence against every other party to this conspiracy.

Who can fail to understand this letter? His words, "go deep enough," "don't fail," "everything depends on you and your helpers," "if you can't get through on your trip after you strike oil, strike through Thornton gap," etc., and "I can keep you safe from all hardships for a year," necessarily imply that when he "strikes oil" there will be an occasion for a flight; that a trip, or route, has already been determined upon; that he may not be able to go through by that route; in which event he is to strike for Thornton gap, and across by Capon and Romney, and down the branch, for the shelter which his co-conspirator offers him. "I am clear of all surveillance now"—does any one doubt that the man who wrote those words wished to assure Booth that he was no longer watched, and that Booth could safely hide with him from his pursuers? Does any one doubt, from the further expression in this letter, "Jake will be at Green's with the funds," that this was a part of the price of blood, or that the eight thousand dollars subscribed by others, and the one thousand additional, subscribed by the writer, were also a part of the price to be paid?

"The oil business," which was the declared business of O'Laughlin and Arnold, was the declared business of the

infamous writer of this letter; was the declared business of John H. Surratt; was the declared business of Booth himself, as explained to Chester and Payne; was "the business" referred to in his telegrams to O'Laughlin, and meant the murder of the President, of his cabinet, and of General Grant. The first of these telegrams is dated Washington, 13th March, and is addressed to M. O'Laughlin, No. 57 North Exeter street, Baltimore, Maryland, and is as follows: "Don't you fear to neglect your business; you had better come on at once. J. Booth." The telegraphic operator, Hoffman, who sent this dispatch from Washington, swears that John Wilkes Booth delivered it to him in person on the day of its date; and the handwriting of the original telegram is established beyond question to be that of Booth. The other telegram is dated Washington, March 27, addressed "M. O'Laughlin, Esq., 57 North Exeter street, Baltimore, Maryland," and is as follows: "Get word to Sam. Come on with or without him on Wednesday morning. We sell that day sure; don't fail. J. Wilkes Booth." The original of this telegram is also proved to be in the handwriting of Booth. The sale referred to in this last telegram was doubtless the murder of the President and others—the "oil speculation," in which the writer of the letter from South Branch Bridge, dated April 6, had taken a thousand dollars, and in which Booth said there was money, and Sanders said there was money, and Atzerodt said there was money. The words of this telegram, "get word to Sam," mean Samuel Arnold, his co-conspirator, who had been with him during all his stay in Washington, at Mrs. Vantine's. These parties to this conspiracy, after they had gone to Baltimore, had additional correspondence with Booth, which the court must infer had relation to carrying out the purposes of their confederation and agreement. The colored witness, Williams, testifies that John Wilkes Booth handed him a letter for Michael O'Laughlin, and another for Samuel Arnold, in Baltimore, some time in March last; one of which he delivered to O'Laughlin at the theatre in Baltimore, and the other to a lady at the door where Arnold boarded in Baltimore.

Their agreement and co-operation in the common object having been thus established, the letter written to Booth by the prisoner Arnold, dated March 27, 1865, the handwriting of which is proved before the court, and which was found in Booth's possession after the assassination, becomes testimony against O'Laughlin, as well as against the writer Arnold, because it is an act done in furtherance of their combination. That letter is as follows:

"Dear John: Was business so important that you could not remain in Baltimore till I saw you? I came in as soon as I could, but found you had gone to Washington. I called also to see Mike, but learned from his mother he had gone out with you and had not returned. I concluded, therefore, he had gone with you. How inconsiderate you have been! When I left you, you stated that we would not meet in a month or so, and therefore I made application for employment, an answer to which I shall receive during the week. I told my parents I had ceased with you. Can I then, under existing circumstances, act as you request? You know full well that the government suspicions something is going on there, therefore the undertaking is becoming more complicated. Why not, for the present, desist?—for various reasons, which, if you look into, you can readily see without my making any mention thereof. You nor any one can censure me for my present course. You have been its cause, for how can I now come after telling them I had left you? Suspicion rests upon me now from my whole family, and even parties in the country. I will be compelled to leave home anyhow, and how soon I care not. None, no not one, were more in favor of the enterprise than myself, and today would be there had you not done as you have. By this, I mean manner of proceeding. I am, as you well know, in need. I am, you may say, in rags, whereas, today, I ought to be well clothed. I do not feel right stalking about with means, and more from appearances a beggar. I feel my dependence. But even all this would have been, and was, forgotten, for I was one with you. Time more propitious will arrive yet. Do not act rashly or in haste. I would prefer your first query, 'Go and see how it will be taken in Richmond,' and ere long I shall be better prepared to again be with you. I dislike writing. Would sooner verbally make known my views. Yet your now waiting causes me thus to proceed. Do not in anger peruse this. Weigh all I have said, and, as a rational man and a friend, you cannot censure or upbraid my conduct. I sincerely trust this, nor ought else that shall or may occur, will ever be an obstacle to obliterate our former friendship and attachment. Write me to Baltimore, as I expect to be in about Wednesday or Thursday; or if you can possibly come on, I will Tuesday meet you at Baltimore at B.

"Ever, I subscribe myself, your friend,

Sam."

Here is the confession of the prisoner Arnold, that he was one with Booth in this conspiracy; the further confession that they are suspected by the government of their country, and the acknowledgment that since they parted Booth had communicated, among other things, a suggestion which leads to the remark in this letter, "I would prefer your first query, 'Go and see how it will be taken in Richmond,' and ere long I shall be better prepared to again be with you." This is a declaration that affects Arnold, Booth and O'Laughlin alike, if the court are satisfied, and it is difficult to see how they can have doubt on the subject, that the matter to be referred to Richmond is the matter of the assassination of the President and others, to effect which these parties had previously agreed and conspired together. It is a matter in testimony, by the declaration of John H. Surratt, who is as clearly proved to have been in this conspiracy and murder as Booth himself, that about the very date of this letter, the 27th of March, upon the suggestion of Booth, and with his knowledge and consent, he went to Richmond, not only to see "how it would be taken there," but to get funds with which to carry out the enterprise, as Booth had already declared to Chester in one of his last interviews, when he said that he or "some one of the party" would be constrained to go to Richmond for funds to carry out the conspiracy. Surratt returned from Richmond, bringing with him some part of the money for which he went, and was then going to Canada, and, as the testimony discloses, bringing with him the dispatches from Jefferson Davis to his chief agents in Canada, which, as Thompson declared to Conover, made the proposed assassination "all right." Surratt, after seeing the parties here, left immediately for Canada and delivered his dispatches to Jacob Thompson, the agent of Jefferson Davis. This was done by Surratt upon the suggestion, or in exact accordance with the suggestion, of Arnold, made on the 27th of March in his letter to Booth just read, and yet you are gravely told that four weeks before the 27th of March Arnold had abandoned the conspiracy.

Surratt reached Canada with these dispatches, as we have seen, about the 6th or 7th of April last, when the witness Conover saw them delivered to Jacob Thompson and heard their contents stated by Thompson, and the declaration from him that these dispatches made it "all right." That Surratt was at that time in Canada is not only established by the testimony of Conover, but it is also in evidence that he told Weichmann on the 3d of April that he was going to Canada, and on that day left for Canada, and afterwards, two letters addressed by Surratt over the fictitious signature of John Harrison, to his mother and to Miss Ward, dated at Montreal, were received by them on the 14th of April, as testified by Weichmann and by Miss Ward, a witness called for the defense. Thus it appears that the condition named by Arnold in his letter had been complied with. Booth had "gone to Richmond," in the person of Surratt, "to see how it would be taken." The rebel authorities at Richmond had approved it, the agent had returned, and Arnold was, in his own words, thereby the better prepared to rejoin Booth in the prosecution of this conspiracy.

To this end Arnold went to Fortress Monroe. As his letter expressly declares, Booth said when they parted, "We would not meet in a month or so, and therefore I made application for employment—an answer to which I shall receive during the week." He did receive the answer that week from Fortress Monroe, and went there to await the "more propitious time," bearing with him the weapon of death which Booth had provided and ready to obey his call, as the act had been approved at Richmond and been made "all right." Acting upon the same fact that the conspiracy had been approved in Richmond and the funds provided, O'Laughlin came to Washington to identify General Grant, the person who was to become the victim of his violence in the final consummation of this crime—General Grant, whom, as is averred in the specification, it had become the part of O'Laughlin by his agreement in this conspiracy to kill and murder. On the evening preceding the assassination—the 13th of April—by

the testimony of three reputable witnesses, against whose truthfulness not one word is uttered here or elsewhere, O'Laughlin went into the house of the Secretary of War, where General Grant then was, and placed himself in position in the hall where he could see him, having declared before he reached that point to one of these witnesses that he wished to see General Grant. The house was brilliantly illuminated at the time; two at least of the witnesses conversed with the accused and the other stood very near to him, took special notice of his conduct, called attention to it, and suggested that he be put out of the house, and he was accordingly put out by one of the witnesses. These witnesses are confident, and have no doubt, and so swear upon their oaths, that Michael O'Laughlin is the man who was present on that occasion. There is no denial on the part of the accused that he was in Washington during the day and during the night of April 13, and also during the day and during the night of the 14th; and yet, to get rid of this testimony, recourse is had to that common device—an alibi; a device never, I may say, more frequently resorted to than in this trial. But what an alibi! Nobody is called to prove it, save some men who, by their own testimony, were engaged in a drunken debauch through the evening. A reasonable man who reads their evidence can hardly be expected to allow it to outweigh the united testimony of three unimpeached and unimpeachable witnesses who were clear in their statements, who entertain no doubt of the truth of what they say, whose opportunities to know were full and complete, and who were constrained to take special notice of the prisoner by reason of his extraordinary conduct.

These witnesses describe accurately the appearance, stature and complexion of the accused, but because they describe his clothing as dark or black, it is urged that as part of his clothing, although dark, was not black, the witnesses are mistaken. O'Laughlin and his drunken companions (one of whom swears that he drank ten times that evening) were strolling in the streets and in the direction of the house of the

Secretary of War, up the avenue; but you are asked to believe that these witnesses could not be mistaken in saying they were not off the avenue above Seventh street, or on K street. I venture to say that no man who reads their testimony can determine satisfactorily all the places that were visited by O'Laughlin and his drunken associates that evening from 7 to 11 o'clock p. m. All this time, from 7 to 11 o'clock p. m., must be accounted for satisfactorily before the alibi can be established. Laughlan does not account for all the time, for he left O'Laughlin after 7 o'clock, and rejoined him, as he says, "I suppose about 8 o'clock." Grillet did not meet him until half-past ten, and then only casually saw him in passing the hotel. May not Grillet have been mistaken as to the fact, although he did meet O'Laughlin after 11 o'clock the same evening, as he swears?

Purdy swears to seeing him in the bar with Grillet about half-past 10, but, as we have seen by Grillet's testimony, it must have been after 11 o'clock. Murphy contradicts, as to time, both Grillet and Purdy, for he says it was half-past 11 or 12 o'clock when he and O'Laughlin returned to Rullman's from Platz's, and Early swears the accused went from Rullman's to Second street to a dance about a quarter-past 11 o'clock, when O'Laughlin took the lead in the dance and stayed about one hour. I follow these witnesses no further. They contradict each other, and do not account for O'Laughlin all the time from 7 to 11 o'clock. I repeat that no man can read their testimony without finding contradictions most material as to time, and coming to the conviction that they utterly fail to account for O'Laughlin's whereabouts on that evening. To establish an alibi the witnesses must know the fact and testify to it. Loughran, Grillet, Purdy, Murphy and Early utterly fail to prove it, and only succeed in showing that they did not know where O'Laughlin was all this time, and that some of them were grossly mistaken in what they testified, both as to time and place. The testimony of James B. Henderson is equally unsatisfactory. He is contradicted by other testimony of the accused as to place. He says

O'Laughlin went up the avenue above Seventh street, but that he did not go to Ninth street. The other witnesses swear he went to Ninth street. He swears he went to Canterbury about 9 o'clock, after going back from Seventh street to Rullman's. Loughran swears that O'Laughlin was with him at the corner of the avenue and Ninth street at 9 o'clock, and went from there to Canterbury, while Early swears that O'Laughlin went up as far as Eleventh street and returned with him and took supper at Welcker's about 8 o'clock. If these witnesses prove an alibi, it is really against each other. It is folly to pretend that they prove facts which make it impossible that O'Laughlin could have been at the house of Secretary Stanton's, as three witnesses swear he was, on the evening of the 13th of April, looking for General Grant.

Has it not, by the testimony thus reviewed, been established *prima facie* that in the months of February, March and April, O'Laughlin had combined, confederated and agreed with John Wilkes Booth and Samuel Arnold to kill and murder Abraham Lincoln, William H. Seward, Andrew Johnson and Ulysses S. Grant? Is it not established, beyond a shadow of doubt, that Booth had so conspired with the rebel agents in Canada as early as October last; that he was in search of agents to do the work on pay, in the interests of the rebellion, and that in this speculation Arnold and O'Laughlin had joined as early as February; that then, and after, with Booth and Surratt, they were in the "oil business," which was the business of assassination by contract as a speculation? If this conspiracy on the part of O'Laughlin with Arnold is established even *prima facie*, the declarations and acts of Arnold and Booth, the other conspirators, in furtherance of the common design, is evidence against O'Laughlin as well as against Arnold himself or the other parties. The rule of law is, that the act or declaration of one conspirator, done in pursuance or furtherance of the common design, is the act or declaration of all the conspirators. (1 Wharton, 706.)

The letter, therefore, of his co-conspirator, Arnold, is evidence against O'Laughlin, because it is an act in the prosecution of the common conspiracy, suggesting what should be done in order to make it effective, and which suggestion, as has been stated, was followed out. The defense has attempted to avoid the force of this letter by reciting the statement of Arnold, made to Horner at the time he was arrested, in which he declared, among other things, that the purpose was to abduct President Lincoln and take him south; that it was to be done at the theatre by throwing the President out of the box upon the floor of the stage, when the accused was to catch him. The very announcement of this testimony excited derision that such a tragedy meant only to take the President and carry him gently away! This pigmy to catch the giant as the assassins hurled him to the floor from an elevation of twelve feet! The court has viewed the theatre, and must be satisfied that Booth, in leaping from the President's box, broke his limb. The court cannot fail to conclude that this statement of Arnold was but another silly device, like that of "the oil business," which, for the time being, he employed to hide from the knowledge of his captor the fact that the purpose was to murder the President. No man can, for a moment, believe that any one of these conspirators hoped or desired, by such a proceeding as that stated by this prisoner, to take the President alive in the presence of thousands assembled in the theatre after he had been thus thrown upon the floor of the stage, much less to carry him through the city, through the lines of your army, and deliver him into the hands of the rebels. No such purpose was expressed or hinted by the conspirators in Canada, who commissioned Booth to let these assassinations on contract. I shall waste not a moment more in combating such an absurdity.

Arnold does confess that he was a conspirator with Booth in this purposed murder; that Booth had a letter of introduction to Dr. Mudd; that Booth, O'Laughlin, Atzerodt, Surratt, a man with an alias, "Mosby," and another whom he does not know, and himself, were parties to this conspiracy,

and that Booth had furnished them all with arms. He concludes this remarkable statement to Horner with the declaration that at that time, to-wit, the first week of March, or four weeks before he went to Fortress Monroe, he left the conspiracy, and that Booth told him to sell his arms if he chose. This is sufficiently answered by the fact that, four weeks afterwards, he wrote his letter to Booth, which was found in Booth's possession after the assassination, suggesting to him what to do in order to make the conspiracy a success, and by the further fact that at the very moment he uttered these declarations, part of his arms were found upon his person, and the rest not disposed of, but at his father's house.

A party to a treasonable and murderous conspiracy against the government of his country cannot be held to have abandoned it because he makes such a declaration as this, when he is in the hands of the officer of the law, arrested for his crime, and especially when his declaration is in conflict with and expressly contradicted by his written acts, and unsupported by any conduct of his which becomes a citizen and a man.

If he abandoned the conspiracy, why did he not make known the fact to Abraham Lincoln and his constitutional advisers that these men, armed with the weapons of assassination, were daily lying in wait for their lives? To pretend that a man who thus conducts himself for weeks after the pretended abandonment, volunteering advice for the successful prosecution of the conspiracy, the evidence of which is in writing, and about which there can be no mistake, has, in fact, abandoned it, is to insult the common understanding of men. O'Laughlin having conspired with Arnold to do this murder, is, therefore, as much concluded by the letter of Arnold of the 27th of March as is Arnold himself. The further testimony touching O'Laughlin, that of Streett, establishes the fact that about the 1st of April he saw him in confidential conversation with J. Wilkes Booth, in this city, on the avenue. Another man, whom

the witness does not know, was in conversation. O'Laughlin called Streett to one side, and told him Booth was busily engaged with his friend—was talking privately to his friend. This remark of O'Laughlin is attempted to be accounted for, but the attempt failed; his counsel taking the pains to ask what induced O'Laughlin to make the remark, received the fit reply: "I did not see the interior of Mr. O'Laughlin's mind; I cannot tell." It is the province of this court to infer why that remark was made, and what it signified.

ATZERODT.

That John H. Surratt, George A. Atzerodt, Mary E. Surratt, David E. Herold, and Louis Payne, entered into this conspiracy with Booth, is so very clear upon the testimony, that little time need be occupied in bringing again before the court the evidence which establishes it. By the testimony of Weichmann we find Atzerodt in February at the house of the prisoner, Mrs. Surratt. He inquired for her or for John when he came and remained over night. After this and before the assassination he visited there frequently, and at that house bore the name of "Port Tobacco," the name by which he was known in Canada among the conspirators there. The same witness testifies that he met him on the street, when he said he was going to visit Payne at the Herndon House, and also accompanied him, along with Herold and John H. Surratt, to the theater in March to hear Booth play in the Apostate. At the Pennsylvania House, one or two weeks previous to the assassination, Atzerodt made the statement to Lieutenant Keim, when asking for his knife which he had left in his room, a knife corresponding in size with the one exhibited in court, "I want that; if one fails I want the other," wearing at the same time his revolver at his belt. He also stated to Greenawalt, of the Pennsylvania House, in March, that he was nearly broke, but had friends enough to give him as much money as would see him through, adding, "I am going away some of these days, but will return with as much gold as will keep

me all my lifetime." Mr. Greenawalt also says that Booth had frequent interviews with Atzerodt, sometimes in the room, and at other times Booth would walk in and immediately go out, Atzerodt following.

John M. Lloyd testifies that some six weeks before the assassination, Herold, Atzerodt, and John H. Surratt came to his house at Surrattsville, bringing with them two Spencer carbines with ammunition, also a rope and wrench. Surratt asked the witness to take care of them, and to conceal the carbines. Surratt took him into a room in the house, it being his mother's house, and showed the witness where to put the carbines, between the joists on the second floor. The carbines were put there according to his directions, and concealed. Marcus P. Norton saw Atzerodt in conversation with Booth at the National Hotel about the 2d or 3d of March; the conversation was confidential, and the witness accidentally heard them talking in regard to President Johnson, and say that "the class of witnesses would be of that character that there could be little proven by them." This conversation may throw some light on the fact that Atzerodt was found in possession of Booth's bank book!

Colonel Nevens testifies that on the 12th of April last he saw Atzerodt at the Kirkwood House; that Atzerodt there asked him, a stranger, if he knew where Vice-President Johnson was, and where Mr. Johnson's room was. Colonel Nevens showed him where the room of the Vice-President was, and told him that the Vice-President was then at dinner. Atzerodt then looked into the dining-room, where Vice-President Johnson was dining alone. Robert R. Jones, the clerk at the Kirkwood House, states that on the 14th, the day of the murder, two days after this, Atzerodt registered his name at the hotel, G. A. Atzerodt, and took No. 126, retaining the room that day, and carrying away the key. In this room, after the assassination, were found the knife and revolver with which he intended to murder the Vice-President.

The testimony of all these witnesses leaves no doubt that the prisoner George Atzerodt entered into this conspiracy with Booth; that he expected to receive a large compensation for the service that he would render in its execution; that he had undertaken the assassination of the Vice-President for a price; that he, with Surratt and Herold, rendered the important service of depositing the arms and ammunition to be used by Booth and his confederates as a protection in their flight after the conspiracy had been executed; and that he was careful to have his intended victim pointed out to him, and the room he occupied in the hotel, so that when he came to perform his horrid work he would know precisely where to go and whom to strike.

I take no further notice now of the preparation which this prisoner made for the successful execution of this part of the traitorous and murderous design. The question is, did he enter into this conspiracy? His language overheard by Mr. Norton excludes every other conclusion. Vice-President Johnson's name was mentioned in that secret conversation with Booth, and the very suggestive expression was made between them that "little could be proved by the witnesses." His confession in his defense is conclusive of his guilt.

PAYNE.

That Payne was in this conspiracy is confessed in the defense made by his counsel, and is also evident from the facts proved, that when the conspiracy was being organized in Canada by Thompson, Sanders, Tucker, Cleary, and Clay, this man Payne stood at the door of Thompson; was recommended and indorsed by Clay with the words, "We trust him;" that after coming hither he first reported himself at the house of Mrs. Mary E. Surratt, inquired for her and for John H. Surratt, remained there for four days, having conversation with both of them; having provided himself with means of disguise, was also supplied with pistols and a knife, such as he afterwards used, and spurs, prepara-

tory to his flight; was seen with John H. Surratt, practising with knives such as those employed in this deed of assassination, and now before the court; was afterwards provided with lodging at the Herndon House, at the instance of Surratt; was visited there by Atzerodt, and attended Booth and Surratt to Ford's theatre, occupying with those parties the box, as I believe and which we may readily infer, in which the President was afterwards murdered.

If further testimony be wanting that he had entered into the conspiracy, it may be found in the fact sworn to by Weichmann, whose testimony no candid man will discredit, that about the 20th of March Mrs. Surratt, in great excitement, and weeping, said that her son John had gone away not to return, when about three hours subsequently, in the afternoon of the same day, John H. Surratt reappeared, came rushing in a state of frenzy into the room, in his mother's house, armed, declaring he would shoot whoever came into the room, and proclaiming that his prospects were blasted and his hopes gone; that soon Payne came into the same room, also armed and under great excitement, and was immediately followed by Booth, with his riding-whip in his hand, who walked rapidly across the floor from side to side, so much excited that for some time he did not notice the presence of the witness. Observing Weichmann the parties then withdrew, upon a suggestion from Booth, to an upper room, and there had a private interview. From all that transpired on that occasion, it is apparent that when these parties left the house that day, it was with the full purpose of completing some act essential to the final execution of the work of assassination, in conformity with their previous confederation and agreement. They returned foiled—from what cause is unknown—dejected, angry, and covered with confusion.

MRS. SURRATT.

It is almost imposing upon the patience of the court to consume time in demonstrating the fact, which none con-

versant with the testimony of this case can for a moment doubt, that John H. Surratt and Mary E. Surratt were as surely in the conspiracy to murder the President as was John Wilkes Booth himself. You have the frequent interviews between John H. Surratt and Booth, his intimate relations with Payne, his visits from Atzerodt and Herold, his deposit of the arms to cover their flight after the conspiracy should have been executed; his own declared visit to Richmond to do what Booth himself said to Chester must be done, to wit, that he or some of the party must go to Richmond in order to get funds to carry out the conspiracy; that he brought back with him gold, the price of blood, confessing himself that he was there; that he immediately went to Canada, delivered dispatches in cipher to Jacob Thompson from Jefferson Davis, which were interpreted and read by Thompson in the presence of the witness Conover, and in which the conspiracy was approved, and, in the language of Thompson, the proposed assassination was "made all right."

One other fact, if any other fact be needed, and I have done with the evidence which proves that John H. Surratt entered into this combination; that is, that it appears by the testimony of the witness, the cashier of the Ontario Bank, Montreal, that Jacob Thompson, about the day that these dispatches were delivered, and while Surratt was then present in Canada, drew from that bank of the rebel funds there on deposit the sum of one hundred and eighty thousand dollars. This being done, Surratt finding it safer, doubtless, to go to Canada for the great bulk of funds which were to be distributed amongst these hired assassins than to attempt to carry it through our lines direct from Richmond, immediately returned to Washington and was present in this city, as is proven by the testimony of Mr. Reid, on the afternoon of the 14th of April, the day of the assassination, booted and spurred, ready for the flight whenever the fatal blow should have been struck. If he was not a conspirator and a party to this great crime, how

comes it that from that hour to this no man has seen him in the capital, nor has he been reported anywhere outside of Canada, having arrived at Montreal, as the testimony shows, on the 18th of April, four days after the murder? Nothing but his conscious coward guilt could possibly induce him to absent himself from his mother, as he does, upon her trial. Being one of these conspirators, as charged, every act of his in the prosecution of this crime is evidence against the other parties to the conspiracy.

That Mary E. Surratt is as guilty as her son of having thus conspired, combined, and confederated to do this murder, in aid of this rebellion, is clear. First, her house was the headquarters of Booth, John H. Surratt, Atzerodt, Payne, and Herold. She is inquired for by Atzerodt; she is inquired for by Payne; and she is visited by Booth, and holds private conversation with him. His picture, together with that of the chief conspirator, Jefferson Davis, is found in her house. She sends to Booth for a carriage to take her, on the 11th of April, to Surrattsville for the purpose of perfecting the arrangements deemed necessary to the successful execution of the conspiracy, and especially to facilitate and protect the conspirators in their escape from justice. On that occasion Booth, having disposed of his carriage, gives to the agent she employed ten dollars with which to hire a conveyance for that purpose. And yet the pretense is made that Mrs. Surratt went on the 11th to Surrattsville exclusively upon her own private and lawful business. Can any one tell, if that be so, how it comes that she should apply to Booth for a conveyance, and how it comes that he, of his own accord, having no conveyance to furnish her, should send her ten dollars with which to procure it? There is not the slightest indication that Booth was under any obligation to her, or that she had any claim upon him, either for a conveyance or for the means with which to procure one, except that he was bound to contribute, being the agent of the conspirators in Canada and Richmond, whatever money might be necessary to the consummation of this

infernal plot. On that day, the 11th of April, John H. Surratt had not returned from Canada with the funds furnished by Thompson!

Upon that journey of the 11th the accused, Mary E. Surratt, met the witness John M. Lloyd at Uniontown. She called him; he got out of his carriage and came to her, and she whispered to him in so low a tone that her attendant could not hear her words, though Lloyd, to whom they were spoken, did distinctly hear them, and testifies that she told him he should have those "shooting-irons" ready, meaning the carbines which her son and Herold and Atzerodt had deposited with him, and added the reason, "for they would soon be called for." On the day of the assassination she again sent for Booth, had an interview with him in her own house, and immediately went again to Surrattsville, and then, at about six o'clock in the afternoon, she delivered to Lloyd a field-glass and told him "to have two bottles of whiskey and the carbines ready, as they would be called for that night." Having thus perfected the arrangement she returned to Washington to her own house, at about half-past eight o'clock in the evening, to await the final result. How could this woman anticipate on Friday afternoon, at six o'clock, that these arms would be called for and would be needed that night unless she was in the conspiracy and knew the blow was to be struck, and the flight of the assassins attempted and by that route? Was not the private conversation with Booth held with her in her parlor on the afternoon of the 14th of April, just before she left on this business, in relation to the orders she should give to have the arms ready?

An endeavor is made to impeach Lloyd. But the court will observe that no witness has been called who contradicts Lloyd's statement in any material matter; neither has his general character for truth been assailed. How, then, is he impeached? Is it claimed that his testimony shows that he was a party to the conspiracy? Then it is conceded by those who set up any such pretense that there

was a conspiracy. A conspiracy between whom? There can be no conspiracy without the co-operation or agreement of two or more persons. Who were the other parties to it? Was it Mary E. Surratt? Was it John H. Surratt, George A. Atzerodt, David E. Herold? Those are the only persons, so far as his own testimony or the testimony of any other witness discloses, with whom he had any communication whatever on any subject immediately or remotely touching this conspiracy before the assassination. His receipt and concealment of the arms are, unexplained, evidence that he was in the conspiracy.

The explanation is that he was dependent upon Mary E. Surratt; was her tenant; and his declaration, given in evidence by the accused herself, is that "she had ruined him, and brought this trouble upon him." But because he was weak enough, or wicked enough, to become the guilty depositary of these arms, and to deliver them on the order of Mary E. Surratt to the assassins, it does not follow that he is not to be believed on oath. It is said that he concealed the facts that the arms had been left and called for. He so testified himself, but he gives the reason that he did it only from apprehension of danger to his life. If he were in the conspiracy, his general credit being unchallenged, his testimony being uncontradicted in any material matter, he is to be believed, and cannot be disbelieved if his testimony is substantially corroborated by other reliable witnesses. Is he not corroborated touching the deposit of arms by the fact that the arms are produced in court—one of which was found upon the person of Booth at the time he was overtaken and slain, and which is identified as the same which had been left with Lloyd by Herold, Surratt, and Atzerodt? Is he not corroborated in the fact of the first interview with Mrs. Surratt by the joint testimony of Mrs. Offut and Lewis J. Weichmann, each of whom testified (and they are contradicted by no one), that on Tuesday, the 11th day of April, at Uniontown, Mrs. Surratt called Mr. Lloyd to come to her, which he did, and she held a secret conversation

with him? Is he not corroborated as to the last conversation on the 14th of April by the testimony of Mrs. Offut, who swears that upon the evening of the 14th of April she saw the prisoner, Mary E. Surratt, at Lloyd's house, approach and hold conversation with him? Is he not corroborated in the fact, to which he swears, that Mrs. Surratt delivered to him at that time the field-glass wrapped in paper, by the sworn statement of Weichmann that Mrs. Surratt took with her on that occasion two packages, both of which were wrapped in paper, and one of which he describes as a small package about six inches in diameter? The attempt was made by calling Mrs. Offut to prove that no such package was delivered, but it failed; she merely states that Mrs. Surratt delivered a package wrapped in paper to her after her arrival there, and before Lloyd came in, which was laid down in the room. But whether it was the package about which Lloyd testifies, or the other package of the two about which Weichmann testifies, as having been carried there that day by Mrs. Surratt, does not appear. Neither does this witness pretend to say that Mrs. Surratt, after she had delivered it to her, and the witness had laid it down in the room, did not again take it up, if it were the same, and put it in the hands of Lloyd. She only knows that she did not see that done; but she did see Lloyd with a package like the one she received in the room before Mrs. Surratt left. How it came into his possession she is not able to state; nor what the package was that Mrs. Surratt first handed her; nor which of the packages it was she afterwards saw in the hands of Lloyd.

But there is one other fact in this case that puts forever at rest the question of the guilty participation of the prisoner Mrs. Surratt in this conspiracy and murder; and that is that Payne, who had lodged four days in her house—who during all that time had sat at her table, and who had often conversed with her—when the guilt of his great crime was upon him, and he knew not where else he could so safely go to find a co-conspirator, and he could trust none

that was not like himself, guilty, with even the knowledge of his presence—under cover of darkness, after wandering for three days and nights, skulking before the pursuing officers of justice, at the hour of midnight, found his way to the door of Mrs. Surratt, rang the bell, was admitted, and upon being asked, “Whom do you want to see,” replied, “Mrs. Surratt.” He was then asked by the officer Morgan, what he came at that time of night for? to which he replied “to dig a gutter in the morning; Mrs. Surratt had sent for him.” Afterwards he said “Mrs. Surratt knew he was a poor man and came to him.” Being asked where he last worked? he replied, “sometimes on ‘I’ street;” and where he boarded? he replied, “he had no boarding-house, and was a poor man who got his living with the pick,” which he bore upon his shoulder, having stolen it from the intrenchments of the capital. Upon being pressed again why he came there at that time of night to go to work, he answered that he simply called to see what time he should go to work in the morning. Upon being told by the officer who fortunately had preceded him to this house that he would have to go to the provost marshal’s office, he moved and did not answer, whereupon Mrs. Surratt was asked to step into the hall and state whether she knew this man. Raising her right hand she exclaimed, “Before God, sir, I have not seen that man before; I have not hired him; I do not know anything about him.” The hall was brilliantly lighted.

If not one word had been said, the mere act of Payne in flying to her house for shelter would have borne witness against her, strong as proofs from Holy Writ. But when she denies, after hearing his declarations that she had sent for him, or that she had gone to him and hired him, and calls her God to witness that she had never seen him, and knew nothing of him, when, in point of fact, she had seen him for four successive days in her own house, in the same clothing which he then wore, who can resist for a moment the conclusion that these parties were alike guilty?

SPANGLER.

The testimony of Spangler's complicity is conclusive and brief. It was impossible to hope for escape after assassinating the President, and such others as might attend him in Ford's theatre, without arrangements being first made to aid the flight of the assassin and to some extent prevent immediate pursuit.

A stable was to be provided close to Ford's theatre, in which the horses could be concealed and kept ready for the assassin's use whenever the murderous blow was struck. Accordingly, Booth secretly, through Maddox, hired a stable in rear of the theatre and connecting with it by an alley, as early as the 1st of January last; showing that at that time he had concluded, notwithstanding all that has been said to the contrary, to murder the President in Ford's theatre and provide the means for immediate and successful flight. Conscious of his guilt, he paid the rent for this stable through Maddox, month by month, giving him the money. He employed Spangler, doubtless for the reason that he could trust him with the secret, as a carpenter to fit up this shed, so that it would furnish room for two horses, and provided the door with lock and key. Spangler did this work for him. Then, it was necessary that a carpenter having access to the theatre should be employed by the assassin to provide a bar for the outer door of the passage leading to the President's box, so that when he entered upon his work of assassination he would be secure from interruption from the rear. By the evidence, it is shown that Spangler was in the box in which the President was murdered on the afternoon of the 14th of April, and when there damned the President and General Grant, and said the President ought to be cursed, he had got so many good men killed; showing not only his hostility to the President, but the cause of it—that he had been faithful to his oath and had resisted that great rebellion in the interest of which his life was about to be sacrificed by this man and his co-conspirators. In performing the work which had doubtless been intrusted to him by Booth, a mortise was cut

in the wall. A wooden bar was prepared, one end of which could be readily inserted in the mortise and the other pressed against the edge of the door on the inside so as to prevent its being opened. Spangler had the skill and the opportunity to do that work and all the additional work which was done.

It is in evidence that the screws in "the keepers" to the locks on each of the inner doors of the box occupied by the President were drawn. The attempt has been made, on behalf of the prisoner, to show that this was done some time before, accidentally, and with no bad design, and had not been repaired by reason of inadvertence; but that attempt has utterly failed, because the testimony adduced for that purpose relates exclusively to but one of the two inner doors, while the fact is, that the screws were drawn in both, and the additional precaution taken to cut a small hole through one of these doors through which the party approaching and while in the private passage would be enabled to look into the box and examine the exact posture of the President before entering. It was also deemed essential, in the execution of this plot, that some one should watch at the outer door, in the rear of the theatre, by which alone the assassin could hope for escape. It was for this work Booth sought to employ Chester in January, offering \$3,000 down of the money of his employers, and the assurance that he should never want. What Chester refused to do Spangler undertook and promised to do. When Booth brought his horse to the rear door of the theatre, on the evening of the murder, he called for Spangler, who went to him, when Booth was heard to say to him, "Ned, you'll help me all you can, won't you?" To which Spangler replied, "Oh, yes."

When Booth made his escape, it is testified by Colonel Stewart, who pursued him across the stage and out through the same door, that as he approached it some one slammed it shut. Ritterspaugh, who was standing behind the scenes when Booth fired the pistol and fled saw Booth run down the passage toward the back door, and pursued him; but Booth drew his knife upon him and passed out, slamming

the door after him. Ritterspaugh opened it and went through, leaving it open behind him, leaving Spangler inside, and in a position from which he readily could have reached the door. Ritterspaugh also states that very quickly after he had passed through this door he was followed by a large man, the first who followed him, and who was, doubtless, Colonel Stewart. Stewart is very positive that he saw this door slammed; that he himself was constrained to open it, and had some difficulty in opening it. He also testifies that as he approached the door a man stood near enough to have thrown it to with his hand, and this man, the witness believes, was the prisoner Spangler. Ritterspaugh has sworn that he left the door open behind him when he went out, and that he was first followed by the large man, Colonel Stewart. Who slammed that door behind Ritterspaugh? It was not Ritterspaugh; it could not have been Booth, for Ritterspaugh swears that Booth was mounting his horse at the time; and Stewart swears that Booth was upon his horse when he came out. That it was Spangler who slammed the door after Ritterspaugh may not only be inferred from Stewart's testimony, but it is made very clear by his own conduct afterwards upon the return of Ritterspaugh to the stage. The door being then open, and Ritterspaugh being asked which way Booth went, had answered. Ritterspaugh says: "Then I came back on the stage, where I had left Edward Spangler; he hit me on the face with his hand and said, 'Don't say which way he went.' I asked him what he meant by slapping me in the mouth? He said, 'For God's sake, shut up.'"

The testimony of Withers is adroitly handled to throw doubt upon these facts. It cannot avail, for Withers says he was knocked in the scene by Booth, and when he "come to" he got a side view of him. A man knocked down and senseless, on "coming to" might mistake anybody by a side view for Booth.

An attempt has been made by the defense to discredit this testimony of Ritterspaugh, by showing his contradictory statements to Gifford, Carlan and Lamb, neither of whom do

in fact contradict him, but substantially sustain him. None but a guilty man would have met the witness with a blow for stating which way the assassin had gone. A like confession of guilt was made by Spangler when the witness Miles, the same evening, and directly after the assassination, came to the back door, where Spangler was standing with others, and asked Spangler who it was that held the horse, to which Spangler replied: "Hush; don't say anything about it." He confessed his guilt again when he denied to Mary Anderson the fact, proved here beyond all question, that Booth had called him when he came to that door with his horse, using the emphatic words, "No, he did not; he did not call me." The rope comes to bear witness against him, as did the rope which Atzerodt and Herold and John H. Surratt had carried to Surrattsville and deposited there with the carbines.

It is only surprising that the ingenious counsel did not attempt to explain the deposit of the rope at Surrattsville by the same method that he adopted in explanation of the deposit of this rope, some sixty feet long, found in the carpet-sack of Spangler, unaccounted for save by some evidence which tends to show that he may have carried it away from the theatre.

It is not needful to take time in the recapitulation of the evidence, which shows conclusively that David E. Herold was one of these conspirators. His continued association with Booth, with Atzerodt, his visits to Mrs. Surratt's, his attendance at the theatre with Payne, Surratt and Atzerodt, his connection with Atzerodt on the evening of the murder, riding with him on the street in the direction of and near to the theatre at the hour appointed for the work of assassination, and his final flight and arrest, show that he, in common with all the other parties on trial, and all the parties named upon your record not upon trial, had combined and confederated to kill and murder in the interests of the rebellion, as charged and specified against them.

That this conspiracy was entered into by all these parties, both present and absent, is thus proved by the acts, meetings, declarations and correspondence of all the parties, beyond any doubt whatever. True it is circumstantial evidence, but the court will remember the rule before recited, that circumstances cannot lie; that they are held sufficient in every court where justice is judicially administered to establish the fact of a conspiracy. I shall take no further notice of the remark made by the learned counsel who opened for the defense, and which has been followed by several of his associates, that, under the Constitution, it requires two witnesses to prove the overt act of high treason, than to say, this is not a charge of high treason, but of a treasonable conspiracy, in aid of a rebellion, with intent to kill and murder the executive officer of the United States, and commander of its armies, and of the murder of the President in pursuance of that conspiracy, and with the intent laid, etc. Neither by the Constitution, nor by the rules of the common law, is any fact connected with this allegation required to be established by the testimony of more than one witness. I might say, however, that every substantive averment against each of the parties named upon this record has been established by the testimony of more than one witness.

That the several accused did enter into this conspiracy with John Wilkes Booth and John H. Surratt to murder the officers of this government named upon the record, in pursuance of the wishes of their employers and instigators in Richmond and Canada, and with intent thereby to aid the existing rebellion and subvert the Constitution and laws of the United States, as alleged, is no longer an open question.

The intent as laid was expressly declared by Sanders in the meeting of the conspirators at Montreal in February last, by Booth in Virginia and New York, and by Thompson to Conover and Montgomery; but if there were no testimony directly upon this point, the law would presume the intent, for the reason that such was the natural and necessary tendency and manifest design of the act itself.

The learned gentleman (Mr. Johnson) says the government has survived the assassination of the President, and thereby would have you infer that this conspiracy was not entered into and attempted to be executed with the intent laid. With as much show of reason it might be said that because the government of the United States has survived this unmatched rebellion, it therefore results that the rebel conspirators waged war upon the government with no purpose of intent thereby to subvert it. By the law we have seen that without any direct evidence of previous combination and agreement between these parties, the conspiracy might be established by evidence of the acts of the prisoners, or of any others with whom they co-operated, concurring in the execution of the common design. (Roscoe, 416.)

Was there co-operation between the several accused in the execution of this conspiracy? That there was is as clearly established by the testimony as is the fact that Abraham Lincoln was killed and murdered by John Wilkes Booth. The evidence shows that all of the accused, save Mudd and Arnold, were in Washington on the 14th of April, the day of the assassination, together with John Wilkes Booth and John H. Surratt; that on that day Booth had a secret interview with the prisoner Mary E. Surratt; that immediately thereafter she went to Surrattsville to perform her part of the preparation necessary to the successful execution of the conspiracy, and did make that preparation; that John H. Surratt had arrived here from Canada, notifying the parties that the price to be paid for this great crime had been provided for, at least in part, by the deposit receipts of April 6th for \$180,000, procured by Thompson of the Ontario Bank, Montreal, Canada; that he was also prepared to keep watch, or strike a blow, and ready for the contemplated flight; that Atzerodt, on the afternoon of that day, was seeking to obtain a horse, the better to secure his own safety by flight, after he should have performed the task which he had voluntarily undertaken by contract in the conspiracy—the murder of Andrew Johnson, then Vice-President of the United States; that he

did procure a horse for that purpose at Naylor's, and was seen about nine o'clock in the evening to ride to the Kirkwood House, where the Vice-President then was, dismount and enter. At a previous hour Booth was in the Kirkwood House, and left his card, now in evidence, doubtless intended to be sent to the room of the Vice-President, and which was in these words: "Don't wish to disturb you. Are you at home? J. Wilkes Booth." Atzerodt, when he made application at Brooks' in the afternoon for the horse, said to Weichmann, who was there, he was going to ride in the country, and that "he was going to get a horse and send for Payne." He did get a horse for Payne, as well as for himself; for it is proven that on the 12th he was seen in Washington riding the horse which had been procured by Booth, in company with Mudd, last November, from Gardner. A similar horse was tied before the door of Mr. Seward on the night of the murder, was captured after the flight of Payne, who was seen to ride away, and which horse is now identified as the Gardner horse. Booth also procured a horse on the same day, took it to his stable in the rear of the theatre, where he had an interview with Spangler, and where he concealed it. Herold, too, obtained a horse in the afternoon, and was seen between nine and ten o'clock riding with Atzerodt down the avenue from the Treasury, then up Fourteenth and down F street, passing close by Ford's theater.

O'Laughlin had come to Washington the day before, had sought out his victim (General Grant) at the house of the Secretary of War, that he might be able with certainty to identify him, and at the very hour when these preparations were going on was lying in wait at Rullman's on the avenue, keeping watch, and declaring, as he did, at about 10 o'clock p. m., when told that the fatal blow had been struck by Booth, "I don't believe Booth did it." During the day, and the night before, he had been visiting Booth, and doubtless encouraging him, and at that very hour was in position, at a convenient distance, to aid and protect him in his flight, as well as to execute his own part of the conspiracy by inflicting

death upon General Grant, who happily was not at the theatre nor in the city, having left the city that day. Who doubts that, Booth having ascertained in the course of the day that General Grant would not be present at the theater, O'Laughlin, who was to murder General Grant, instead of entering the box with Booth, was detailed to lie in wait, and watch and support him?

His declarations of his reasons for changing his lodgings here and in Baltimore, after the murder, so ably and so ingeniously presented in the argument of his learned counsel (Mr. Cox), avail nothing before the blasting fact that he did change his lodgings, and declared "he knew nothing of the affair whatever." O'Laughlin, who lurked here, conspiring daily with Booth and Arnold for six weeks to do this murder, declares "he knew nothing of the affair." O'Laughlin, who said he was "in the oil business," which Booth and Surratt, and Payne and Arnold, have all declared meant this conspiracy, says he "knew nothing of the affair." O'Laughlin, to whom Booth sent the dispatches of the 13th and 27th of March—O'Laughlin, who is named in Arnold's letter as one of the conspirators, and who searched for General Grant on Thursday night, laid in wait for him on Friday, was defeated by that Providence "which shapes our ends," and laid in wait to aid Booth and Payne, declares "he knows nothing of the matter." Such a denial is as false and inexcusable as Peter's denial of our Lord.

Mrs. Surratt had arrived at home, from the completion of her part in the plot, about half-past eight o'clock in the evening. A few moments afterwards she was called to the parlor and there had a private interview with some one unseen, but whose retreating footsteps were heard by the witness Weichmann. This was doubtless the secret and last visit of John H. Surratt to his mother, who had instigated and encouraged him to strike this traitorous and murderous blow against his country.

While all these preparations were going on, Mudd was awaiting the execution of the plot, ready to faithfully per-

form his part in securing the safe escape of the murderers. Arnold was at his post at Fortress Monroe, awaiting the meeting referred to in his letter of March 27th, wherein he says they were not "to meet for a month or so," which month had more than expired on the day of the murder, for his letter and the testimony disclose that this month of suspension began to run from about the first week in March. He stood ready with the arms which Booth had furnished him to aid the escape of the murderers by that route, and secure their communication with their employers. He had given the assurance in that letter to Booth, that although the government "suspected them," and the undertaking was "becoming complicated," yet "a time more propitious would arrive" for the consummation of this conspiracy in which he "was one" with Booth, and when he would "be better prepared to again be with him."

Such were the preparations. The horses were in readiness for the flight; the ropes were procured, doubtless for the purpose of tying the horses at whatever point they might be constrained to delay and to secure their boats to their moorings in making their way across the Potomac. The five murderous camp knives, the two carbines, the eight revolvers, the Derringer, in court and identified, all were ready for the work of death. The part that each played has already been in part stated in this argument and needs no repetition.

Booth proceeded to the theater about 9 o'clock in the evening, at the same time that Atzerodt and Payne and Herold were riding the streets, while Surratt, having parted with his mother at the brief interview in her parlor, from which his retreating steps were heard, was walking the avenue, booted and spurred, and doubtless consulting with O'Laughlin. When Booth reached the rear of the theater, he called Spangler to him (whose denial of that fact, when charged with it, as proven by three witnesses, is very significant), and received from Spangler his pledge to help him all he could, when with Booth he entered the theater by the stage door, doubtless to see that the way was clear from the box

to the rear door of the theater, and look upon their victim, whose exact position they could study from the stage. After this view, Booth passes to the street, in front of the theater, where, on the pavement with other conspirators yet unknown, among them one described as a low-browed villain, he awaits the appointed moment. Booth himself, impatient, enters the vestibule of the theater from the front, and asks the time. He is referred to the clock, and returns. Presently, as the hour of 10 o'clock approached, one of his guilty associates called the time: they wait; again, as the moments elapsed, this conspirator upon watch called the time; again, as the appointed hour draws nigh, he calls the time; and finally, when the fatal moment arrives, he repeats in a louder tone, "Ten minutes past 10 o'clock." Ten minutes past 10 o'clock! The hour has come when the red right hand of these murderous conspirators should strike, and the dreadful deed of assassination be done.

Booth, at the appointed moment, entered the theater, ascended to the dress-circle, passed to the right, paused a moment, looking down, doubtless to see if Spangler was at his post, and approached the outer door of the close passage leading to the box occupied by the President, pressed it open, passed in, and closed the passage door behind him. Spangler's bar was in its place, and was readily adjusted by Booth in the mortise, and pressed against the inner side of the door, so that he was secure from interruption from without. He passes on to the next door, immediately behind the President, and there stopping, looks through the aperture in the door into the President's box, and deliberately observes the precise position of his victim, seated in the chair which had been prepared by the conspirators as the altar for the sacrifice, looking calmly and quietly down upon the glad and grateful people whom by his fidelity he had saved from the peril which had threatened the destruction of their government, and all they held dear this side of the grave, and whom he had come upon invitation to greet with his presence, with the words still lingering upon his lips which he had uttered

with uncovered head and uplifted hand before God and his country, when on the 4th of last March he took again the oath to preserve, protect and defend the Constitution, declaring that he entered upon the duties of his great office "with malice toward none—with charity for all." In a moment more, strengthened by the knowledge that his co-conspirators were all at their posts, seven at least of them present in the city, two of them, Mudd and Arnold, at their appointed places, watching for his coming, this hired assassin moves stealthily through the door, the fastenings of which had been removed to facilitate his entrance, fires upon his victim, and the martyr spirit of Abraham Lincoln ascends to God.

"Treason has done his worst; nor steel, nor poison,
Malice domestic, foreign levy, nothing
Can touch him further."

At the same hour, when these accused and their co-conspirators in Richmond and Canada, by the hand of John Wilkes Booth, inflicted this mortal wound which deprived the republic of its defender, and filled this land from ocean to ocean with a strange, great sorrow, Payne, a very demon in human form, with the words of falsehood upon his lips, that he was the bearer of a message from the physician of the venerable Secretary of State, sweeps by his servants, encounters his son, who protests that the assassin shall not disturb his father, prostrate on a bed of sickness, and receives for answer the assassin's blow from the revolver in his hand, repeated again and again, rushes into the room, is encountered by Major Seward, inflicts wound after wound upon him with his murderous knife, is encountered by Hansell and Robinson, each of whom he also wounds, springs upon the defenseless and feeble Secretary of State, stabs first on one side of his throat, then on the other, again in the face, and is only prevented from literally hacking out his life by the persistence and courage of the attendant Robinson. He turns to flee, and, his giant arm and murderous hand for a moment paralyzed by the consciousness of guilt, he drops his weapons

of death, one in the house, the other at the door, where they were taken up, and are here now to bear witness against him. He attempts escape on the horse which Booth and Mudd had procured of Gardner—with what success has already been stated.

Atzerodt, near midnight, returns to the stable of Naylor the horse which he had procured for this work of murder, having been interrupted in the execution of the part assigned him at the Kirkwood House by the timely coming of citizens to the defense of the Vice-President, and creeps into the Pennsylvania House at 2 o'clock in the morning with another of the conspirators, yet unknown. There he remained until about 5 o'clock, when he left, found his way to Georgetown, pawned one of his revolvers, now in court, and fled northward into Maryland.

He is traced to Montgomery county, to the house of Mr. Metz, on the Sunday succeeding the murder, where, as is proved by the testimony of three witnesses, he said that if the man that was to follow General Grant had followed him, it was likely that Grant was shot. To one of these witnesses (Mr. Layman) he said he did not think Grant had been killed; or if he had been killed, he was killed by a man who got on the cars at the same time that Grant did; thus disclosing most clearly that one of his co-conspirators was assigned the task of killing and murdering General Grant, and that Atzerodt knew that General Grant had left the city of Washington, a fact which is not disputed, on the Friday evening of the murder, by the evening train. Thus this intended victim of the conspiracy escaped, for that night, the knives and revolvers of Atzerodt, and O'Laughlin, and Payne, and Herold, and Booth, and John H. Surratt, and, perchance, Harper and Caldwell, and twenty others, who were then here lying in wait for his life.

BOOTH AND HEROLD.

In the meantime, Booth and Herold, taking the route before agreed upon, make directly after the assassination for

the Anacostia bridge. Booth crosses first, gives his name, passes the guard, and is speedily followed by Herold. They make their way directly to Surrattsville, where Herold calls to Lloyd, "Bring out those things," showing that there had been communication between them and Mrs. Surratt after her return. Both the carbines being in readiness, according to Mary E. Surratt's directions, both were brought out. They took but one. Booth declined to carry the other, saying that his limb was broken. They then declared that they had murdered the President and the Secretary of State. They then make their way directly to the house of the prisoner Mudd, assured of safety and security. They arrived early in the morning before day, and no man knows at what hour they left. Herold rode towards Bryantown with Mudd about 3 o'clock that afternoon, in the vicinity of which place he parted with him, remaining in the swamp, and was afterwards seen returning the same afternoon in the direction of Mudd's house; about which time, a little before sundown, Mudd returned from Bryantown towards his home. This village at the time Mudd was in it was thronged with soldiers in pursuit of the murderers of the President, and although great care has been taken by the defense to deny that any one said in the presence of Dr. Mudd, either there or elsewhere on that day, who had committed this crime, yet it is in evidence by two witnesses, whose truthfulness no man questions, that upon Mudd's return to his own house, that afternoon, he stated that Booth was the murderer of the President, and Boyle the murderer of Secretary Seward, but took care to make the further remark that Booth had brothers, and he did not know which of them had done the act. When did Dr. Mudd learn that Booth had brothers? And what is still more pertinent to this inquiry, from whom did he learn that either John Wilkes Booth or any of his brothers had murdered the President? It is clear that Booth remained in his house until some time in the afternoon of Saturday; that Herold left the house alone, as one of the witnesses states, being seen to pass the window; that he alone of these two as-

sassins was in the company of Dr. Mudd on his way to Bryantown. It does not appear when Herold returned to Mudd's house. It is a confession of Dr. Mudd himself, proven by one of the witnesses, that Booth left his house on crutches, and went in the direction of the swamp. How long he remained there, and what became of the horses which Booth and Herold rode to his house, and which were put into his stable, are facts nowhere disclosed by the evidence. The owners testify that they have never seen the horses since. The accused give no explanation of the matter, and when Herold and Booth were captured they had not these horses in their possession. How comes it that, on Mudd's return from Bryantown, on the evening of Saturday, in his conversation with Mr. Hardy and Mr. Farrell, the witnesses before referred to, he gave the name of Booth as the murderer of the President and that of Boyle as the murderer of Secretary Seward and his son, and carefully avoided intimating to either that Booth had come to his house early that day, and had remained there until the afternoon; that he left him in his house and had furnished him a razor with which Booth attempted to disguise himself by shaving off his moustache? How comes it, also, that, upon being asked by those two witnesses whether the Booth who killed the President was the one who had been there last fall, he answered that he did not know whether it was that man or one of his brothers, but he understood he had some brothers, and added, that if it was the Booth who was there last fall, he knew that one, but concealed the fact that this man had been at his house on that day and was then at his house, and had attempted, in his presence, to disguise his person? He was sorry, very sorry, that the thing had occurred, but not so sorry as to be willing to give any evidence to these two neighbors, who were manifestly honest and upright men, that the murderer had been harbored in his house all day, and was probably at that moment, as his own subsequent confession shows, lying concealed in his house or near by, subject to his call. This is the man who undertakes to show by his own declaration, offered in

evidence against my protest, of what he said afterwards, on Sunday afternoon, the 16th, to his kinsman Dr. George D. Mudd, to whom he then stated that the assassination of the President was a most damnable act—a conclusion in which most men will agree with him, and to establish which his testimony was not needed. But it is to be remarked that this accused did not intimate that the man whom he knew the evening before was the murderer had found refuge in his house, had disguised his person, and sought concealment in the swamp upon the crutches which he had provided for him. Why did he conceal this fact from his kinsman? After the church services were over, however, in another conversation on their way home, he did tell Dr. George Mudd that two suspicious persons had been at his house, who had come there a little before daybreak on Saturday morning; that one of them had a broken leg, which he bandaged; that they got something to eat at his house; that they seemed to be laboring under more excitement than probably would result from the injury; that they said they came from Bryantown, and inquired the way to Parson Wilmer's; that while at his house one of them called for a razor and shaved himself. The witness says, "I do not remember whether he said that this party shaved off his whiskers or his moustache, but he altered somewhat, or probably materially, his features." Finally, the prisoner, Dr. Mudd, told this witness that he, in company with the younger of the two men, went down the road towards Bryantown in search of a vehicle to take the wounded man away from his house. How comes it that he concealed in this conversation the fact proved, that he went with Herold towards Bryantown and left Herold outside of the town? How comes it that in this second conversation, on Sunday, insisted upon here with such pertinacity as evidence for the defense, but which had never been called for by the prosecution, he concealed from his kinsman the fact which he had disclosed the day before to Hardy and Farrell, that it was Booth who assassinated the President, and the fact which is now disclosed by his other confessions given in evidence for

the prosecution, that it was Booth whom he had sheltered, concealed in his house, and aided to his hiding place in the swamp? He volunteers as evidence his further statement, however, to this witness, that on Sunday evening he requested the witness to state to the military authorities that two suspicious persons had been at his house, and see if anything could be made of it. He did not tell the witness what became of Herold, and where he parted with him on the way to Bryantown. How comes it that when he was in Bryantown on the Saturday evening before, when he knew that Booth was then at his house, and that Booth was the murderer of the President, he did not himself state it to the military authorities then in that village, as he well knew? It is difficult to see what kindled his suspicions on Sunday, if none were in his mind on Saturday, when he was in possession of the fact that Booth had murdered the President, and was then secreting and disguising himself in the prisoner's own house.

His conversation with Gardner on the same Sunday at the church is also introduced here to relieve him from the overwhelming evidences of his guilt. He communicates nothing to Gardner of the fact that Booth had been in his house; nothing of the fact that he knew the day before that Booth had murdered the President; nothing of the fact that Booth had disguised or attempted to disguise himself; nothing of the fact that he had gone with Booth's associate, Herold, in search of a vehicle, the more speedily to expedite their flight; nothing of the fact that Booth had found concealment in the woods and swamp near his house, upon the crutches which he had furnished him. He contents himself with merely stating "that we ought to raise immediately a home guard, to hunt up all suspicious persons passing through our section of country and arrest them, for there were two suspicious persons at my house yesterday morning."

It would have looked more like aiding justice and arresting felons if he had put in execution his project of a home guard on Saturday, and made it effective by the arrest of the

man then in his house who had lodged with him last fall, with whom he had gone to purchase one of the very horses employed in this flight after the assassination, whom he had visited last winter in Washington, and to whom he had pointed out the very route by which he had escaped by way of his house, whom he had again visited on the 3d of last March, preparatory to the commission of this great crime, and who he knew, when he sheltered and concealed him in the woods on Saturday, was not merely a suspicious person, but was, in fact, the murderer and assassin of Abraham Lincoln. While I deem it my duty to say here, as I said before, when these declarations uttered by the accused on Sunday, the 16th, to Gardner and George D. Mudd, were attempted to be offered on the part of the accused, that they are in no sense evidence, and by the law were wholly inadmissible, yet I state it as my conviction that, being upon the record upon motion of the accused himself, so far as these declarations to Gardner and George D. Mudd go, they are additional indications of the guilt of the accused, in this, that they are manifestly suppressions of the truth and suggestions of falsehood and deception; they are but the utterances and confessions of guilt.

To Lieutenant Lovett, Joshua Lloyd and Simon Gavican, who, in pursuit of the murderer, visited his house on the 18th of April, the Tuesday after the murder, he denied positively, upon inquiry, that two men had passed his house, or had come to his house on the morning after the assassination. Two of these witnesses swear positively to his having made the denial, and the other says he hesitated to answer the question he put to him; all of them agree that he afterwards admitted that two men had been there, one of whom had a broken limb, which he had set; and when asked by this witness who that man was, he said he did not know—that the man was a stranger to him, and that the two had been there but a short time. Lloyd asked him if he had ever seen any of the parties, Booth, Herold and Surratt, and he said he had never seen them; while it is positively proved that he was

acquainted with John H. Surratt, who had been in his house; that he knew Booth, and had introduced Booth to Surratt last winter. Afterwards, on Friday, the 21st, he admitted to Lloyd that he had been introduced to Booth last fall, and that this man, who came to his house on Saturday, the 15th, remained there from about 4 o'clock in the morning until about 4 in the afternoon; that one of them left his house on horseback, and the other walking. In the first conversation he denied ever having seen these men.

Colonel Wells also testifies that, in his conversation with Dr. Mudd on Friday, the 21st, the prisoner said that he had gone to Bryantown, or near Bryantown, to see some friends on Saturday, and that as he came back to his own house he saw the person he afterwards supposed to be Herold passing to the left of his house towards the barn, but that he did not see the other person at all after he left him in his own house, about 1 o'clock. If this statement be true, how did Dr. Mudd see the same person leave his house on crutches? He further stated to this witness that he returned to his own house about 4 o'clock in the afternoon; that he did not know this wounded man; said he could not recognize him from the photograph which is of record here, but admitted that he had met Booth some time in November, when he had some conversation with him about lands and horses; that Booth had remained with him that night in November, and on the next day had purchased a horse. He said he had not again seen Booth from the time of the introduction in November up to his arrival at his house on the Saturday morning after the assassination. Is not this a confession that he did see John Wilkes Booth on that morning at his house, and knew it was Booth? If he did not know him, how came he to make this statement to the witness: that "he had not seen Booth after November prior to his arrival there on the Saturday morning?"

He had said before to the same witness, he did not know the wounded man. He said further to Colonel Wells, that when he went upstairs after their arrival, he noticed that the person he supposed to be Booth had shaved off his moustache.

Is it not inferable from this declaration that he then supposed him to be Booth? Yet he declared the same afternoon, and while Booth was in his own house, that Booth was the murderer of the President. One of the most remarkable statements made to this witness by the prisoner was that he heard for the first time on Sunday morning, or late in the evening of Saturday, that the President had been murdered! From whom did he hear it? The witness (Colonel Wells) volunteers his "impression" that Dr. Mudd had said he had heard it after the persons had left his house. If the "impression" of the witness thus volunteered is to be taken as evidence—and the counsel for the accused, judging from their manner, seem to think it ought to be—let this question be answered: how could Dr. Mudd have made that impression upon anybody truthfully, when it is proved by Farrell and Hardy that on his return from Bryantown, on Saturday afternoon, he not only stated that the President, Mr. Seward and his son had been assassinated, but that Boyle had assassinated Mr. Seward, and Booth had assassinated the President? Add to this the fact that he said to this witness that he left his own house at 1 o'clock, and when he returned the men were gone, yet it is in evidence, by his own declarations, that Booth left his house at 4 o'clock on crutches, and he must have been there to have seen it, or he could not have known the fact.

Mr. Williams testifies that he was at Mudd's house on Tuesday, the 18th of April, when he said that strangers had not been that way, and also declared that he heard, for the first time, of the assassination of the President on Sunday morning, at church. Afterwards, on Friday, the 21st, Mr. Williams asked him concerning the men who had been at his house, one of whom had a broken limb, and he confessed they had been there. Upon being asked if they were Booth and Herold, he said they were not—that he knew Booth. I think it is fair to conclude that he did not know Booth, when we consider the testimony of Weichmann, of Norton, of Evans, and all the testimony just referred to, wherein he declares,

himself, that he not only knew him, but that he had lodged with him, and that he had himself gone with him when he purchased his horse from Gardner last fall, for the very purpose of aiding the flight of himself, or some of his confederates.

All these circumstances taken together, which, as we have seen upon high authority, are stronger as evidences of guilt than even direct testimony, leave no further room for argument, and no rational doubt that Doctor Samuel A. Mudd was as certainly in this conspiracy as were Booth and Herold, whom he sheltered and entertained; receiving them under cover of darkness on the morning after the assassination, concealing them throughout that day from the hand of offended justice, and aiding them, by every endeavor, to pursue their way successfully to their co-conspirator, Arnold, at Fortress Monroe, and in which direction they fled until overtaken and Booth was slain.

We next find Herold and his confederate Booth, after their departure from the house of Mudd, across the Potomac in the neighborhood of Port Conway, on Monday, the 24th of April, conveyed in a wagon. There Herold, in order to obtain the aid of Captain Jett, Ruggles and Bainbridge, of the confederate army, said to Jett, "We are the assassins of the President;" that this was his brother with him, who, with himself, belonged to A. P. Hill's corps; that his brother had been wounded at Petersburg; that their names were Boyd. He requested Jett and his rebel companions to take them out of the lines. After this Booth joined these parties, was placed on Ruggles' horse, and crossed the Rappahannock river. They then proceeded to the house of Garrett, in the neighborhood of Port Royal, and nearly midway between Washington city and Fortress Monroe, where they were to have joined Arnold. Before these rebel guides and guards parted with them, Herold confessed they were traveling under assumed names—that his own was Herold, and that the name of the wounded man was John Wilkes Booth, "who had killed the President." The rebels left Booth at Garrett's, where Herold re-

visited him from time to time, until they were captured. At 2 o'clock on Wednesday morning, the 26th, a party of United States officers and soldiers surrounded Garrett's barn where Booth and Herold lay concealed, and demanded their surrender. Booth cursed Herold, calling him a coward, and bade him go, when Herold came out and surrendered himself, was taken into custody, and is now brought into court. The barn was then set on fire, when Booth sprang to his feet, amid the flames that were kindling about him, carbine in hand, and approached the door, seeking, by the flashing light of the fire, to find some new victim for his murderous hand, when he was shot, as he deserved to be, by Sergeant Corbett, in order to save his comrades from wounds or death by the hands of this desperate assassin. Upon his person was found the following bill of exchange:

"No. 1492. The Ontario Bank, Montreal Branch. Exchange for £61 12s. 10d. Montreal, 27th October, 1864. Sixty days after sight of this first of exchange, second and third of the same tenor and date, pay to the order of J. Wilkes Booth £61 12s. 10d. sterling, value received, and charge to the account of this office. H. Stanus, manager. To Messrs. Glynn, Mills & Co., London."

Thus fell, by the hands of one of the defenders of the republic, this hired assassin, who, for a price, murdered Abraham Lincoln, bearing upon his person, as this bill of exchange testifies, additional evidence of the fact that he had undertaken, in aid of the rebellion, this work of assassination by the hands of himself and his confederates, for such sum as the accredited agents of Jefferson Davis might pay him or them, out of the funds of the confederacy, which, as is in evidence, they had in "any amount" in Canada for the purpose of rewarding conspirators, spies, poisoners and assassins, who might take service under their false commissions, and do the work of the incendiary and the murderer upon the lawful representatives of the American people, to whom had been intrusted the care of the republic, the maintenance of the Constitution, and the execution of the laws.

The court will remember that it is in the testimony of Merritt and Montgomery and Conover, that Thompson, and

Sanders, and Clay, and Cleary, made their boasts that they had money in Canada for this very purpose. Nor is to be overlooked or forgotten that the officers of the Ontario Bank at Montreal testify that during the current year of this conspiracy and assassination Jacob Thompson had on deposit in that bank the sum of six hundred and forty-nine thousand dollars, and that these deposits to the credit of Jacob Thompson accrued from the negotiation of bills of exchange drawn by the Secretary of the Treasury of the so-called Confederate States on Frazier, Trenholm & Co., of Liverpool, who were known to be the financial agents of the Confederate States. With an undrawn deposit in this bank of four hundred and fifty-five dollars, which has remained to his credit since October last, and with an unpaid bill of exchange drawn by the same bank upon London, in his possession and found upon his person, Booth ends his guilty career in this work of conspiracy and blood in April, 1865, as he began it in October, 1864, in combination with Jefferson Davis, Jacob Thompson, George N. Sanders, Clement C. Clay, William C. Cleary, Beverley Tucker and other co-conspirators, making use of the money of the rebel confederation to aid in the execution and in the flight, bearing at the moment of his death upon his person their money, part of the price, which they paid for his great crime, to aid him in its consummation, and secure him afterwards from arrest and the just penalty which by the law of God and the law of man is denounced against treasonable conspiracy and murder.

THE CONSPIRATORS ALL GUILTY.

By all the testimony in the case it is, in my judgment, made as clear as any transaction can be shown by human testimony, that John Wilkes Booth and John H. Surratt, and the several accused, David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt and Samuel A. Mudd, did, with intent to aid the existing rebellion and to subvert the Constitution and laws of the United States, in the month of

October last and thereafter, combine, confederate and conspire with Jefferson Davis, George N. Sanders, Beverley Tucker, Jacob Thompson, William C. Cleary, Clement C. Clay, George Harper, George Young, and others unknown, to kill and murder, within the military department of Washington, and within the intrenched fortifications and military lines thereof, Abraham Lincoln, then President of the United States and commander-in-chief of the army and navy thereof; Andrew Johnson, Vice-President of the United States; William H. Seward, Secretary of State; and Ulysses S. Grant, lieutenant general, in command of the armies of the United States; and that Jefferson Davis, the chief of this rebellion, was the instigator and procurer, through his accredited agents in Canada, of this treasonable conspiracy.

It is also submitted to the court, that it is clearly established by the testimony that John Wilkes Booth, in pursuance of this conspiracy, so entered into by him and the accused, did, on the night of the 14th of April, 1865, within the military department of Washington, and the intrenched fortifications and military lines thereof, and with the intent laid, inflict a mortal wound upon Abraham Lincoln, then President and Commander-in-chief of the army and navy of the United States, whereof he died; that in pursuance of the same conspiracy and within the said department and intrenched lines, Lewis Payne assaulted, with intent to kill and murder, William H. Seward, then Secretary of State of the United States; that George A. Atzerodt, in pursuance of the same conspiracy, and within the said department, laid in wait, with intent to kill and murder Andrew Johnson, then Vice-President of the United States; that Michael O'Laughlin, within said department, and in pursuance of said conspiracy, laid in wait to kill and murder Ulysses S. Grant, then in command of the armies of the United States; and that Mary E. Surratt, David E. Herold, Samuel Arnold, Samuel A. Mudd and Edward Spangler did encourage, aid, and abet the commission of said several acts in the prosecution of said conspiracy.

If this treasonable conspiracy has not been wholly executed; if the several executive officers of the United States and the commander of its armies, to kill and murder whom the said several accused thus confederated and conspired, have not each and all fallen by the hands of these conspirators, thereby leaving the people of the United States without a President or Vice-President; without a Secretary of State, who alone is clothed with authority by the law to call an election to fill the vacancy, should any arise, in the offices of President and Vice-President; and without a lawful commander of the armies of the republic, it is only because the conspirators were deterred by the vigilance and fidelity of the executive officers, whose lives were mercifully protected on that night of murder by the care of the Infinite Being who has thus far saved the republic and crowned its arms with victory.

If this conspiracy was thus entered into by the accused; if John Wilkes Booth did kill and murder Abraham Lincoln in pursuance thereof; if Lewis Payne did, in pursuance of said conspiracy, assault with intent to kill and murder William H. Seward, as stated, and if the several parties accused did commit the several acts alleged against them in the prosecution of said conspiracy, then, it is the law that all the parties to that conspiracy, whether present at the time of its execution or not, whether on trial before this court or not, are alike guilty of the several acts done by each in the execution of the common design. What these conspirators did in the execution of this conspiracy by the hand of one of their co-conspirators they did themselves; his act, done in the prosecution of the common design, was the act of all the parties to the treasonable combination, because done in execution and furtherance of their guilty and treasonable agreement.

As we have seen, this is the rule, whether all the conspirators are indicted or not; whether they are all on trial or not. "It is not material what the nature of the indictment is, provided the offense involve a conspiracy. Upon indictment for murder, for instance, if it appears that others, together with

the prisoner, conspired to perpetrate the crime, the act of one done in pursuance of that intention would be evidence against the rest." (1 Whar. 706.) To the same effect are the words of Chief Justice Marshall, before cited, that whoever leagued in a general conspiracy, performed any part, however minute, or however remote, from the scene of action, are guilty as principals. In this treasonable conspiracy, to aid the existing armed rebellion, by murdering the executive officers of the United States and the commander of its armies, all the parties to it must be held as principals, and the act of one in the prosecution of the common design the act of all.

I leave the decision of this dread issue with the court, to which alone it belongs. It is for you to say, upon your oaths, whether the accused are guilty.

I am not conscious that in this argument I have made any erroneous statement of the evidence, or drawn any erroneous conclusions; yet I pray the court, out of tender regard and jealous care for the rights of the accused, to see that no error of mine, if any there be, shall work them harm. The past services of the members of this honorable court give assurance that, without fear, favor, or affection, they will discharge with fidelity the duty enjoined upon them by their oaths. Whatever else may befall, I trust in God that in this, as in every other American court, the rights of the whole people will be respected, and that the Republic in this, its supreme hour of trial, will be true to itself and just to all—ready to protect the rights of the humblest, to redress every wrong, to avenge every crime, to vindicate the majesty of law, and to maintain inviolate the Constitution, whether assailed secretly or openly, by hosts armed with gold, or armed with steel.

THE TRIAL OF THE CONSPIRATORS TO ASSASSINATE PRESIDENT LINCOLN: THE VERDICT, THE SENTENCES AND THE EXECUTIONS.

THE NARRATIVE.

On June 30th, 1865, the Military Commission, after deliberating behind closed doors for several days, announced its verdict and judgment. It unanimously found all of the eight accused persons guilty. It sentenced Herold, Atzerodt, Payne and Mrs. Surratt to be hanged; O'Laughlin, Arnold and Dr. Mudd to imprisonment for life, and Spangler to imprisonment for six years. The four were hanged together at the Arsenal Prison at Washington on the seventh day of July, and the others sent to the Military Prison at Dry Tortugas, Florida to serve their terms. O'Laughlin died of yellow fever while there, and the sentences of Arnold, Spangler and Dr. Mudd were commuted after a few years.

THE TRIAL.

Before a Military Commission, Washington, D. C., 1865.

Major General DAVID HUNTER,¹ *President.*²

June 29.

The COMMISSION met today with closed doors and from 10 a. m. to 6 p. m. was engaged in deliberating upon the evidence adduced in the case of each of the accused.

June 30.

The COMMISSION delivered judgment today in the case of all the prisoners as follows:

¹ See *ante*, p. 34.

² For the other members of the Commission, see *ante*, p. 33.

After mature consideration of the evidence adduced in the case of the accused *David E. Herold*, the COMMISSION find the said accused—

Of the Specification *Guilty*.

Except “combining, confederating and conspiring with Edward Spangler;” as to which part thereof.... *Not Guilty*.

Of the Charge *Guilty*.

Except the words of the charge, “combining, confederating, and conspiring with Edward Spangler;” as to which part of the charge *Not Guilty*.

And the COMMISSION do, therefore, sentence him, the said *David E. Herold*, to be hanged by the neck until he be dead, at such time and place as the President of the United States shall direct; two-thirds of the Commission concurring therein.

After mature consideration of the evidence adduced in the case of the accused, *George A. Atzerodt*, the COMMISSION find the said accused—

Of the Specification *Guilty*.

Except “combining, confederating, and conspiring with Edward Spangler;” of this..... *Not Guilty*.

Of the Charge *Guilty*.

Except “combining, confederating and conspiring with Edward Spangler;” of this *Not Guilty*.

And the COMMISSION do, therefore, sentence him, the said *George A. Atzerodt*, to be hanged by the neck until he be dead, at such time and place as the President of the United States shall direct; two-thirds of the Commission concurring therein.

After mature consideration of the evidence adduced in the case of the accused, *Lewis Payne*, the COMMISSION find the said accused—

Of the Specification *Guilty*.

Except “combining, confederating, and conspiring with Edward Spangler;” of this *Not Guilty*.

Of the Charge *Guilty*.

Except “combining, confederating, and conspiring with Edward Spangler;” of this *Not Guilty*.

And the COMMISSION do, therefore, sentence him, the said *Lewis Payne*, to be hanged by the neck until he be dead, at such time and place as the President of the United States shall direct; two-thirds of the Commission concurring therein.

After mature consideration of the evidence adduced in the case of the accused, *Mary E. Surratt*, the COMMISSION find the said accused—

Of the Specification *Guilty*.
 Except as to “receiving, sustaining, harboring, and concealing Samuel Arnold and Michael O’Laughlin,” and except as to “combining, confederating, and conspiring with Edward Spangler;” of this *Not Guilty*.

Of the Charge *Guilty*.
 Except as to “combining, confederating, and conspiring with Edward Spangler;” of this *Not Guilty*.

And the COMMISSION do, therefore, sentence her, the said *Mary E. Surratt*, to be hanged by the neck until she be dead, at such time and place as the President of the United States shall direct; two-thirds of the members of the Commission concurring therein.

After mature consideration of the evidence adduced in the case of the accused, *Michael O’Laughlin*, the COMMISSION find the said accused—

Of the Specification *Guilty*.
 Except the words thereof, “And in the further prosecution of the conspiracy aforesaid, and of its murderous and treasonable purposes aforesaid, on the nights of the 13th and 14th of April, 1865, at Washington City, and within the military department and military lines aforesaid, the said Michael O’Laughlin did there and then lie in wait for Ulysses S. Grant, then Lieutenant-General and Commander of the armies of the United States, with intent then and there to kill and murder the said Ulysses S. Grant;” of said words *Not Guilty*; and except “combining, confederating, and conspiring with Edward Spangler;” of this *Not Guilty*.

Of the Charge *Guilty.*
 Except "combining, confederating, and conspiring with Edward Spangler;" of this *Not Guilty*

The COMMISSION do, therefore, sentence the said Michael O'Laughlin to be imprisoned at hard labor for life, at such place as the President shall direct.

After mature consideration of the evidence adduced in the case of the accused, *Edward Spangler*, the COMMISSION find the said accused—

Of the Specification *Not Guilty.*
 Except as to the words, "the said Edward Spangler, on said 14th day of April, A. D. 1865, at about the same hour of that day, as aforesaid, within said military department and the military lines aforesaid, did aid and abet him (meaning John Wilkes Booth) in making his escape after the said Abraham Lincoln had been murdered in manner aforesaid;" and of these words *Guilty.*

Of the Charge *Not Guilty.*
 But of having feloniously and traitorously aided and abetted John Wilkes Booth in making his escape after having killed and murdered Abraham Lincoln, President of the United States, he, the said Edward Spangler, at the time of aiding and abetting as aforesaid, well knowing that the said Abraham Lincoln, President as aforesaid, had been murdered by the said John Wilkes Booth, as aforesaid..... *Guilty.*

The COMMISSION do, therefore, sentence the said Edward Spangler to be imprisoned at hard labor for six years, at such place as the President shall direct.

After mature consideration of the evidence adduced in the case of the accused, *Samuel Arnold*, the COMMISSION find the said accused—

Of the Specification *Guilty.*
 Except "combining, confederating, and conspiring with Edward Spangler;" of this..... *Not Guilty.*

Of the Charge *Guilty.*
 Except "combining, confederating, and conspiring with Edward Spangler;" of this..... *Not Guilty.*

The COMMISSION do, therefore, sentence the said Samuel Arnold to imprisonment at hard labor for life, at such place as the President shall direct.

After mature consideration of the evidence adduced in the case of the accused, *Samuel A. Mudd*, the COMMISSION find the said accused—

Of the Specification *Guilty*.
 Except "combining, confederating, and conspiring with Edward Spangler;" of this not guilty; and excepting "receiving, entertaining, and harboring and concealing said Lewis Payne, John H. Surratt, Michael O'Laughlin, George A. Atzerodt, Mary E. Surratt and Samuel Arnold;" of this

Not Guilty.

Of the Charge *Guilty*.
 Except "combining, confederating and conspiring with Edward Spangler," of this *Not Guilty*.

The COMMISSION do, therefore, sentence the said Samuel A. Mudd to be imprisoned at hard labor for life, at such place as the President shall direct.

July 5.

The findings and sentences were approved by PRESIDENT JOHNSON in the following order issued today:

Executive Mansion, July 5, 1865.

The foregoing sentences in the cases of David E. Herold, G. A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt and Samuel A. Mudd, are hereby approved, and it is ordered that the sentences of said David E. Herold, G. A. Atzerodt, Lewis Payne and Mary E. Surratt be carried into execution by the proper military authority, under the direction of the Secretary of War, on the 7th day of July, 1865, between the hours of 10 o'clock a. m. and 2 o'clock p. m. of that day. It is further ordered, that the prisoners, Samuel Arnold, Samuel A. Mudd, Edward Spangler and Michael O'Laughlin be confined at hard labor in the Penitentiary at Albany, New York, during the period designated in their respective sentences.

Andrew Johnson,
 President.

July 7.

Mr. Aikin³ and Mr. Clappitt,⁴ counsel for Mrs. Mary E. Surratt, filed a petition to HON. ANDREW WYLIE,⁵ one of the Justices of the Supreme Court of the District of Columbia, for a writ of *habeas corpus*. They alleged that she was unlawfully in the custody of Major General Hancock under the judgment of an illegal court that had sentenced her to be hanged, and asked that the said Hancock should be ordered to produce her before the court.

JUDGE WYLIE made the following order: "Let the writ issue as prayed returnable before the Criminal Court of this district now sitting, at the hour of 10 a. m., this 7th day of July, 1865."

At 11:30 a. m. Major General Hancock,⁶ accompanied by Attorney General Speed,⁷ appeared before the COURT and made the following return: I hereby acknowledge the service of the writ hereto attached and return the same and respectfully say that the body of Mary E. Surratt is in my possession, under and by virtue of an order of Andrew Johnson, President of the United States and commander-in-chief of the army and navy for the purposes in said order expressed, a copy of which is hereby attached and made part of this return; and that I do not produce said body by reason of the order of the President of the United States, indorsed upon

³ See *ante*, p. 41.

⁴ See *ante*, p. 41.

⁵ WYLIE, ANDREW. (1814-1885.) Born Canonsburg, Pa. Graduated University of Indiana, 1832; studied law Transylvania University, Kentucky, 1835; admitted to bar 1837; practiced law at Pittsburgh and then at Alexandria, Va. Justice Supreme Court, District of Columbia, 1863-1885. Died at Washington.

⁶ HANCOCK, WINFIELD SCOTT. (1824-1886.) Born Montgomery Square, Md. Graduated West Point, 1844; served in Mexican War and made a Brigadier General at beginning of Civil War. Became a Major General and in 1880 was defeated by General Garfield for the Presidency of the United States. Died at Governor's Island, N. Y.

⁷ See *ante*, p. 495.

said writ, to which reference is hereby respectfully made, and which is as follows:

Executive Office, July 7, 1865, 10 A. M.

To Major General W. S. Hancock, Commander, Etc.:

I, Andrew Johnson, President of the United States, do hereby declare that the writ of *habeas corpus* has been heretofore suspended in such cases as this, and I do hereby especially suspend this writ, and direct that you proceed to execute the order heretofore given upon the judgment of the Military Commission and you will give this order in return to the writ. Andrew Johnson, President.

JUDGE WYLIE. The court yields to the suspension of the writ of *habeas corpus* by the President of the United States.

THE EXECUTIONS.

July 7.

Herold, Atzerodt, Payne and Mrs. Surratt were hanged today at the Arsenal prison, General John F. Hartranft^{7a} having charge of the execution.

George Alfred Townsend, a noted newspaper writer of the day, gave to his paper, the *New York World*, the following graphic account of the end of the four leaders in the great tragedy:

I entered a large, grassy yard, surrounded by an exceedingly high wall. On the top of this wall soldiers, with muskets in their hands, were thickly planted. The yard below was broken by irregular buildings of brick. I climbed by a flight of outside stairs to the central building, where many officers were seated at the windows, and looked a while at the strange scene on the grassy plaza. On the left the long, barred, impregnable penitentiary rose. The shady spots beneath were occupied by huddling spectators. Soldiers were filling their canteens at the pumps. A face or two looked out from the barred jail. The north side of the yard was enclosed on three sides by columns of soldiers drawn up in regular order, the side next to the penitentiary being short to admit of ingress to the prisoners' door; but the opposite column reached entirely up

^{7a} HARTRANFT, JOHN FREDERICK. (1830-1889.) Born Montgomery County, Pa. Became a Major General in the Civil War. Auditor-General of Pennsylvania, 1865-1871; Governor of Pennsylvania, 1875-1879. Commander-in-Chief Grand Army, 1875-1877. Died Norristown, Pa.

to the north wall. The gallows consisted of a beam resting horizontally in the air, twenty feet from the ground. Four ropes at irregular intervals dangled from it, each noosed at the end. It was upheld by three props, one in the center and one at each end. These props came all the way to the ground, where they were mortised in heavy bars. Midway of them a floor was laid, twenty by twelve feet, held in its position on the farther side by shorter props, of which there were many, and reached by fifteen steps, railed on either side. This floor had no supports on the side nearest the eye, except two temporary rods, at the foot of which two inclined beams pointed menacingly, held in poise by ropes from the gallows floor. Two hinges only held the floor to its firmer half. These were to give way at the fatal moment.

The traps were two, sustained by two different props. The nooses were on each side of the central support. Close by the foot of the gallows four wooden boxes were at the edge of four newly excavated graves, the fresh earth of which was already dried and brittle in the burning sun. In these boxes and pits were to be placed the victims when the gallows had let them down. Not far from these, in silence and darkness beneath the prison where they had lain so long and so forebodingly, the body of John Wilkes Booth, sealed up in the brick floor, had been moldering. If the dead can hear, he had listened many a time to the rattle of their manacles upon the stairs; to the drowsy hum of the trial and the buzz of the garrulous spectators; to the moaning or the gibing or the praying in the bolted cells where those whom kindred fate had given a little lease upon life lay waiting for the terrible pronouncement. The sentence gave them only till two o'clock, and it was near that time, when suddenly the wicket opens, the troops spring to their feet and stand at order arms, the flags go up, the low order passes from company to company; the spectators huddle a little nearer to the scaffold; all the writers for the press produce their pencils and notebooks.

First came a middle-aged woman dressed in black, bonneted and veiled, walking between two bareheaded priests. One of these held against his breast a crucifix of jet, and in the folds of his blue-fringed sash he carried an open breviary, while both of them muttered the service of the dead. Four soldiers, with muskets at shoulder, followed, and a captain led the way to the gallows.

The second party escorted a small and shambling German, whose head had a long white cap upon it, rendering more filthy his dull complexion, and upon whose feet the chains clanked as he slowly advanced, preceded by two officers, flanked by a Lutheran clergyman, and followed, as his predecessor, by an armed squad.

The third preacher and party clustered about a shabby boy, whose limbs tottered as he progressed.

The fourth walked in, the shadow of a straight high statue, whose tawny hair and large blue eyes were suggestive rather of the barbarian striding in his conqueror's triumph than the assassin going to the gallows. All these, captives, priests, guards and offi-

cers, nearly twenty in all, climbed slowly and solemnly the narrow steps; and upon four armchairs, stretching across the stage in the rear of the traps, the condemned were seated with their spiritual attendants behind them.

The findings and warrants were immediately read to the prisoners by General Hartranft in a quiet and respectful tone, an aid holding an umbrella over him. Mrs. Surratt was placed on the right, and the nearest to her was Payne, followed by Herold and Atzerodt. At first Mrs. Surratt was very feeble, and leaned her head upon alternate sides of her armchair in nervous spasms; but now and then, when a sort of wail just issued from her lips, the priest placed before her the crucifix to lull her fearful spirit. All the while the good Fathers Wigett and Walter murmured their low, tender cadences, and now and then the woman's face lost its deadly fear, and took a bold cognizable survey of the spectators. She wore a robe of dark woolen, no collar, and common shoes of black listing. Her general expression was that of acute suffering, vanishing at times as if by the conjuration of her pride, and again returning in a paroxysm, as she looked at the dreadful rope dangling before her.

Payne, the strangest criminal in our history, was alone dignified and self-possessed. He wore a closely fitting knit shirt, a sailor's straw hat tied with a ribbon, and dark pantaloons, but no shoes. His collar, cut very low, showed the tremendous muscularity of his neck, and the breadth of his breast was more conspicuous by the manner in which the pinioned arms thrust it forward. His height, his vigor, his glare, made him the strong central figure of the tableau. He looked at death as for one long expected, and not a tremor nor a shock stirred his long, stately limbs; and he died without taking the hand of any living friend.

Herold, the third condemned, although whimpering, had far more grit than I anticipated; he was inquisitive and flippant-faced, and looked at the noose flaunting before him and at the people gathered below. Atzerodt wore a grayish coat, black vest, light pantaloons and slippers, and a white affair on his head, perhaps a handkerchief. He was visited by his mother and a poor ignorant woman with whom he cohabited. He was the picture of despair, and died ridiculously, whistling up his courage.

When General Hartranft ceased reading, there was a momentary lull, broken only by the cadences of the priests.

The Rev. Mr. Gillette addressed the spectators in a deep, impressive tone. The prisoner Payne requested him to thus publicly and sincerely return his thanks to General Hartranft, the other officers, the soldiers, and all persons who had charge of him and had attended him. Dr. Gillette then followed in a fervent prayer in behalf of the prisoners, during which Payne's eyes momentarily filled with tears, and he followed in the prayer with visible feeling.

Rev. Dr. Olds followed, saving in behalf of the prisoner, David E. Herold, that he tendered his forgiveness to all who had wronged him, and asked the forgiveness of all whom he had wronged. He

gave his thanks to the officers and guards for kindnesses rendered him. He hoped that he died in charity with all men and at peace with God. Dr. Olds concluded with a feeling prayer for the prisoner.

Rev. Dr. Butler then made a similar return of thanks on behalf of George A. Atzerodt for kindness received from his guards and attendants, and concluded with an earnest invocation in behalf of the criminal, saying that the blood of Jesus Christ cleanses from all sin, and asking that God Almighty have mercy upon this man. The two holy fathers having received Mrs. Surratt's confession, after the custom of their creed, observed silence. In this, as in other respects, Mrs. Surratt's last hours were entirely modest and womanly. The stage was still filled with people; the crisis of the occasion had come; the chairs were all withdrawn, and the condemned stood upon their feet, and the process of tying the limbs began.

It was with a shudder, almost a blush, that I saw an officer gather the ropes tightly three times about the robes of Mrs. Surratt, and bind her ankles with cords. She half fainted, and sank backward upon the attendants, her limbs yielding to the extremity of her terror, but uttering no cry. Payne, with his feet firmly laced together, stood straight as one of the scaffold beams, and braced himself up so stoutly that this in part prevented the breaking of his neck. Herold stood well beneath the drop, still whimpering at the lips. Atzerodt, in his groveling attitude, while they tied him, began to indulge in his old vice of gabbing. Again, when the white death-cap was drawn over his face, he continued to cry out under it, saying: "Good-by, shentlemens who is before me now," and again, "May we meet in the other world; God help me." Herold protested against the knot, it being as huge as one's double fist. Mrs. Surratt asked to be supported, that she might not fall. When the death-caps were all drawn over the faces of the prisoners, and they stood in line in the awful suspense between absolute life and immediate death, an officer signaled the executioners, and the great beams were darted against the props simultaneously. The two traps fell with a slam, the four bodies dropped like a single thing. The bodies were allowed to hang about twenty minutes, when Surgeon Otis, U. S. V., and Assistant Surgeons Woodward and Porter, U. S. A., examined them and pronounced all dead.

In about ten minutes more a ladder was placed against the scaffold and the bodies were cut down and given over to a squad of soldiers, who placed them in plain pine boxes, and lowered them in the graves prepared for them.

THE SENTENCES TO IMPRISONMENT.

July 15.

Today President Johnson ordered that Arnold, Mudd, Spangler and O'Laughlin be imprisoned in the Military

Prison at Dry Tortugas, Florida, instead of the Penitentiary at Albany, N. Y.

A couple of years after their confinement there, yellow fever broke out among the prisoners and carried off a number of the inmates, as well as some of the officials and surgeons. Dr. Mudd offered his professional services, which were gladly accepted by the commandant. His first act was the enlargement of all the portholes in the upper casements, to give his patients more air. This treatment gave good results, and he soon had the epidemic under control. All the officers of the post united in signing a petition to President Johnson asking for his release on account of the valuable services rendered, and he was released from confinement March 8, 1869. Arnold and Spangler were released March 21, 1869. Michael O'Laughlin had died of yellow fever while the epidemic was raging, in September, 1867.⁸

THE FINAL RESTING PLACES OF THE CONSPIRATORS.

The bodies of the four who were hanged were afterwards removed from the Arsenal grounds by the permission of the Government.

"The remains of Mrs. Surratt were taken from the Arsenal grounds to Mount Olivet (Catholic) Cemetery, where the pine gun-box in which she was buried was exchanged for an appropriate casket and headstone bearing only the name, 'Mrs. Surratt,' was placed at the grave. Herold was buried at the Congressional Cemetery, on the banks of the eastern branch of the Potomac, east of the city; and Atzerodt sleeps at Glenwood Cemetery, a mile north of the Capitol. The remains of Payne were buried in Holmead Cemetery, in the northwest part of the city, but in after years were exhumed, as the cemetery was discontinued. The body of Captain Wirz (see *post*, p. 874), who was hanged in the Old Capitol Prison, Washington, D. C., for his inhuman treatment of soldiers at Andersonville, lay fifth in a fearful row of graves—Mrs. Surratt, Payne, Herold, Atzerodt and Wirz—but was removed to Mount Olivet at the same time that the others were. Dr. Mudd sleeps in the Catholic Cemetery of St. Mary's Church, near Bryantown, and Spangler died at Dr. Mudd's, February 27, 1875, and was buried in the graveyard connected with St. Peter's Church, within two miles of Dr. Mudd's house. President Johnson issued an order February 13, 1869, that the remains of O'Laughlin be delivered to his mother, and they were brought north from Dry Tortugas. Samuel Arnold is buried near Baltimore, Md."⁹

⁸ Oldroyd, p. 152.

⁹ Oldroyd, p. 210.

THE TRIAL OF CAPTAIN HENRY WIRZ FOR CONSPIRACY AND MURDER, WASHINGTON, D. C. 1865.

THE NARRATIVE.

In the American Civil War, many prisoners were taken by both sides, and by the fall of 1863 the rebel prisons in the vicinity of Richmond had become so overcrowded that a new prison was located at Andersonville, about sixty miles from Macon, Georgia. Here trenches were dug inclosing an area of eighteen acres, subsequently enlarged to twenty-seven. Timber was cut down and set into the trenches, forming a stockade about eighteen feet high. Inside the stockade about twenty feet from the wall was established a dead-line formed by driving small stakes in the ground and nailing on top of them a strip of board; and the orders were to shoot down without warning, any prisoner who crossed this line. Every tree and shrub within the enclosure was cut down and it contained no shelter of any kind. Col. W. H. Persons, who was the first commandant, ordered a lot of lumber with which to build barracks for the men; but before any work was done he was succeeded by General John H. Winder, and the lumber was used for other purposes, and no buildings or shelters of any kind were erected within the enclosure, save two barren sheds which were used for hospital purposes. On the outside of the stockade there were a series of platforms and sentry boxes at intervals of one hundred feet in which guards were continuously posted, and from which they had an unobstructed view of the prison. At a distance of sixty paces outside the main stockade, a second stockade about twelve feet high was built, and the intervening space was left unoccupied. This was designed as an additional safeguard against any attempt of the prisoners to escape. Surrounding the whole was a cordon of earthworks in which guns were

placed and kept continually manned. The guard consisted of a force of from three to five thousand men, chiefly home guards, and they were encamped west of and near to the stockade. A creek, having its source in a swamp or morass less than half a mile from the stockade, ran from west to east through the place at about the center. The water in this creek was not wholesome at its source and before it reached the stockade there was poured into it all the filth from the camp of the Confederate Guard, their hospital and cook houses; and to this was added all the filth and excrement originating within the prison pen. For a time this creek was the only source from which the prisoners obtained water; but in time the creek bed and fully an acre or more of land bordering it became a putrid mass of corruption, into which the men waded knee-deep to secure water from the running stream. In this extremity many of the men with their knives and pieces of broken canteens, dug wells for themselves.

In February, 1864, the first lot of prisoners were turned into the prison and by August more than 33,000 Union soldiers were confined within the enclosure of Andersonville. Almost immediately they began to die in large numbers. In 1864 (as shown by the Confederate records) there were 592 deaths and in August, 2992 passed to their last resting place, as many as 127 in one day in that month; 150 men were shot for crossing the dead line and one-half of the sufferers died without receiving any medical treatment. When the Union army captured the place it found 13,000 graves, nearly 40 per cent of all those confined in the stockade, and about 2000 of the rescued prisoners died on their way home from the prison.

Gen. John H. Winder, Superintendent of the Military Prisons of the Confederacy, was in charge of the prison at first, with his son, Captain W. S. Winder; but in March, 1864, Captain Henry Wirz,¹ a member of his staff, was placed

¹ HENRY WIRZ (1822-1865) was the son of German parents, but claimed to have been born at Zurich in one of the German cantons of Switzerland. This claim was not, however, allowed by the Swiss Consul General in the United States, who refused to be the treas-

in command. He was there when the Confederate Army surrendered and while nearly all the captured officers were at once paroled, Wirz was arrested, taken to Macon and then to Washington, and in August, 1865, a Military Commission was appointed by President Johnson to try him for his cruelties.

The charges against Wirz were two: First, that he had conspired with Gen. John H. Winder and others to injure the health and destroy the lives of the prisoners of war at Andersonville. Second, that he was guilty of "murder in violation of the laws and customs of war." The trial lasted two months and over one hundred witnesses were examined. Most of them had been prisoners at Andersonville and told horrible stories of the conditions there. But besides these, there were more than a score of men who had been in the Confederate service and were employed at the prison as

urer of a subscription taken up to defray the expenses of his trial. ("Stevenson, *The Southern Side*," p. 131.) He emigrated to America in 1849, landing in the United States unable to speak a word of our language, but having some knowledge of woolen manufactures, he obtained employment in a shawl factory in Lawrence, Massachusetts. Here he remained for some years, when he removed to Louisville, Ky., and became an attendant to a homeopathic physician, where he acquired the information upon which he subsequently practiced. From Kentucky he removed to Louisiana, and commenced his career as a physician, offering his services to the plantations of the section where he located. When the war broke out he became a violent partisan of the rebel cause, enlisted as a private in the army and being wounded in the arm at the battle of Manassas, was detailed as a clerk in the Libby Prison at Richmond. Here his acquaintance with John H. Winder first began, and through him he obtained his commission as captain, and was placed on his staff as assistant adjutant general. As a deputy provost marshal, he was sent on an inspecting tour in the year 1862-3 of the prisons and prisoners throughout the South. In the summer of the latter year he was deputed by Jefferson Davis, at the instigation of Winder, to carry secret dispatches to the rebel commissioners, Mason in England, and Slidell in France, and to the financial agents of the Confederate government in Europe. He returned in January, 1864, and soon after, in the train of Winder, he went to Andersonville with him, and was placed in immediate charge of the prisoners there confined as Superintendent of the Confederate States Military Prison at Andersonville, where he was on duty at the close of the war.

guards, officers or surgeons and some of them had made official reports, telling of the horrible condition of the prison and its inmates. A number of these reports were introduced in evidence and the parties who made them were called on to testify concerning what they had written. This evidence fully corroborated what had been testified to by those who had been prisoners, concerning the general conditions in the prison. Dr. Joseph Jones, a Confederate surgeon, made a report in August, 1864, to the Surgeon General in which he said:

"I visited 2000 sick within the stockade, lying under some long sheds which had been built at the northern portion for themselves. At this time only one medical officer was in attendance, whereas at least 20 medical officers should have been employed. The sick lay upon the bare boards or upon such ragged blankets as they possessed, without, as far as I observed, any bedding or even straw. Pits for the reception of feces were dug within a few feet of the lower floor, and they were almost never unoccupied by those suffering from diarrhoea. The haggard, distressed countenances of these miserable, complaining, dejected, living skeletons, crying for medical aid and food, and the ghastly corpses, with their glazed eyeballs staring up into vacant space, with the flies swarming down their open and grinning mouths, and over their ragged clothes, infested with numerous lice, as they lay amongst the sick and dying, formed a picture of helpless, hopeless misery which it would be impossible to portray by the brush. Millions of flies swarmed over everything and covered the faces of the sleeping patients and crawled down their open mouths and deposited their maggots in the gangrenous wounds of the living and the mouths of the dead. Mosquitos in great numbers also infested the tents and many of the patients were so stung by these pestiferous insects that they resembled those suffering with measles. I saw the most filthy rags which had been applied several times and imperfectly washed, used in dressing recent wounds. Where hospital gangrene was prevailing it was impossible for any wound to escape contagion under these circumstances."^a

These statements of Dr. Jones were fully corroborated by a number of other surgeons who were on duty at Andersonville. Dr. G. G. Roy said

"The prisoners presented the most horrible spectacle of humanity that I ever saw in my life. A good many were suffering from scurvy and other diseases; a good many were naked. . . . Their

^a Trial of Henry Wirz, pp. 626, 627.

condition generally was almost indescribable. . . . The prisoners were too densely crowded. . . . There was no shelter, except such as they constructed themselves, which was very insufficient. A good many were in holes in the earth with their blankets thrown over them; a good many had a blanket or oilcloth thrown over poles; some were in tents constructed by their own ingenuity."^b

Dr. John C. Bates testified, among other things:

"When I was medical officer for the day, the men would gather around me and ask me for a bone. . . . I would give them whatever I could find at my disposition without robbing others. . . . They did not presume to ask me for meat at all; . . . they could not be furnished with any clothing except that the clothing of the dead was generally appropriated to the living. . . . There was a partial supply of fuel, but not sufficient to keep the men warm and prolong their existence. . . . As a general thing, the patients were destitute; they were filthy and partly naked. . . . The clamor all the while was for something to eat. I feel myself safe in saying that 75 per cent of those who died might have been saved, had those unfortunate men been properly cared for as to food, clothing, bedding, etc."^c

Dr. J. C. Pelot, another Confederate surgeon, in an official report directed to the chief of his division, in September, 1864, said:

"The tents are entirely destitute of either bunks, bedding or straw, the patients being compelled to lie on the bare ground. I would earnestly call attention to the article of diet. The corn bread received from the bakery being made up without sifting, is wholly unfit for the use of the sick; and often (in the last twenty-four hours) upon examination the inner portion is found to be perfectly raw. The meat (beef) received for the patients does not amount to over two ounces a day, and for the past three or four days no flour has been issued. The corn bread cannot be eaten by many, for to do so would be to increase the diseases of the bowels, from which a large majority are suffering, and it is therefore thrown away. All their rations received by way of sustenance is two ounces of boiled beef and half pint of rice soup per day. Under these circumstances all the skill that can be brought to bear upon their cases by the medical officer will avail nothing."^d

Wirz's lawyers set up several technical defenses, one, that as an officer in the Confederate army he was entitled to the terms agreed upon between Generals Sherman and Johnson, upon

^b *Id.*, p. 82.

^c *Id.*, p. 38.

^d *Id.*

the surrender of the latter, viz., that they should not be treated as rebels, but as belligerents; another, that the war being ended and civil law restored, he could not be tried by a military tribunal; but both these pleas were overruled by the Court.

And to all of this evidence Wirz's reply was that he was not personally responsible for the conditions in the prison; that he could do no more than take what was sent to him in the way of provisions and medical supplies, and that he had no authority to enlarge the prison. His duty, he said, was simply to keep the Union soldiers and to see that they did not get away, and that he had acted always in conformity with the orders of his superior officers; and he claimed that on account of the blockade and the taking from the fields and factories of all men of fighting age, the southern armies and southern people themselves suffered from the lack of food and other supplies in a marked degree. But the evidence in regard to these conditions for which he was doubtless not legally responsible was supplemented by evidence of personal acts of cruelty. Not only was it shown that he had frequently boasted to his prisoners that he was killing more Union soldiers than the Confederate armies were destroying on the battle-field, but both Union and Confederate soldiers told of numerous personal acts of cruelty on his part and proved him directly chargeable with the most cruel punishments quite unwarranted by the laws of war, which he caused to be inflicted on men who attempted to escape or who violated the rules of discipline which he had established. These punishments consisted of stopping of rations, establishment of a dead-line to cross which, even accidentally, was instant death, confinement in the stocks, chain gang, bucking and gagging, tying up by the thumbs, flogging on the bare back, and chaining to posts till life yielded to the torture, and the giving of prisoners (attempting to escape) to ferocious dogs to be torn to pieces.

But the damning cases were those where prisoners were killed by the guards sometimes reluctantly but forced to do

so by the direct orders of Wirz and in his presence.^e A crippled soldier asked the sentry to get permission from Wirz to go outside the stockade for water. When Wirz came he repeated his request, but the only answer the captain gave was to call out to the sentry to shoot the one-legged Yankee devil; the shot was fired and the cripple's head blown off.^f Seeing a prisoner reaching for water beyond the dead line Wirz ordered the sentry to fire, and when he hesitated, told him that if he did not shoot the damned Yankee he would shoot him. The guard then fired, killing the man instantly.^g There was a half-witted boy nick-named Chickamauga by the soldiers who was a nuisance to the prisoners who treated him unkindly; he asked Wirz for a parole that he might leave the prison. Wirz cursed him and ordered the guard to blow out his brains, which was done.^h A soldier who had just come to the prison and did not know the rules, went to the stream for a drink falling on the edge with his head a few inches over the dead line. Wirz called out to the sentry: "God damn your soul, why don't you kill the Yankee son of a bitch?" the sentry fired, the man falling dead in the creek.ⁱ

And near the end of the trial witnesses appeared on the stand who testified to several cases of wilful murder committed by Wirz himself. Thomas C. Alcock,^j a Union prisoner, swore that a sick soldier named Wright of the Eighth Missouri Infantry asked Captain Wirz to let him go outside for some fresh air, Wirz replying, "Any air is too good for a d—d Yankee," pulled out his revolver and shot him down. The man died two hours afterward. James H. Davidson,^k another Union soldier, said he saw this deed, that "Wright was sick and lying upon the ground. He asked Wirz to let him go

^e See the evidence of William Bull, p. 863; W. W. Crandall, pp. 718, 726; Joseph Adler, pp. 706, 815, and Bernard Corrigan, pp. 708, 844.

^f Samuel D. Brown, p. 674; Jacob B. Brown, p. 694.

^g C. E. Smith, pp. 726, 830.

^h Joseph R. Ackuff, p. 703; O. S. Belcher, p. 679.

ⁱ Prescott Tracy, p. 710.

^j P. 692.

^k Pp. 700, 780.

out, when Wirz cursed him and shot him with his revolver and said 'he was killing more Yankees at Andersonville than Lee was at Richmond.' "

George W. Gray,¹ an Indiana soldier, told the Court: "Stewart, a private in a Minnesota regiment, and I had brought a dead body out to the dead-house, when Wirz came up and asked what we were doing there. Stewart replied that we had brought out a dead body by proper authority. Wirz said it was a lie, that we were trying to make our escape. Stewart said it was not so. Wirz told him if he said that again he would blow his d—d brains out. Stewart repeated what he had said, when Wirz drew his revolver and shot him dead."

A prisoner who was ordered by Wirz to walk faster, was so weak from disease that he was unable to do so, Wirz knocked him down and then stamped on his body until he died;^m another sick man, on asking Wirz to let him go to the hospital was cursed by the Captain and given a violent blow on the head with his revolver which killed him;ⁿ a guard having thrown a brick which accidentally struck Wirz, he turned around, and in a rage, and without stopping to make any inquiry, shot a Union soldier who stood by;^o being in a sentry box, and seeing a prisoner trying to recover his cup from the stream in which it had accidentally dropped, Wirz drew his revolver and shot him.^p And a prisoner named La Baum related that when taken into the prison with several hundred others they were kept in line so long that they were perishing with thirst, but the guards were given orders not to let them have any water. One Union soldier fell down in a fit when several of his comrades, with the permission of the guard, ran down to the creek for water. He heard several shots, and looking around saw that it was Wirz who was firing at the men with his revolver. He saw two men hit by

¹ Pp. 729, 869.

^m Martin E. Hogan, pp. 695, 866.

ⁿ William W. Scott, pp. 707, 865.

^o *Id.*

^p George Conway, pp. 722, 866.

the shots, one was brought up dying and the other wounded in the breast. Wirz then demanded, "Where is the guard that allowed these men to leave the ranks?" He was pointed out, whereupon Wirz ordered him to be tied up by the thumbs for two hours, and turning to the prisoners, said: "That is the way I get rid of you sons of bitches."^a

^a Pp. 720, 867.

Colonel Stibbs, who was a member of the Court, in his paper on Andersonville and the Trial of Henry Wirz (see *post*, p. 667) gives the following graphic picture of the scene in court when another case of this kind was described:

"For weeks after the trial began the Judge Advocate presented only such testimony as went to show the general conditions existing at the prison and which tended to establish the charge of conspiracy, and he held back until near the close of the trial the evidence on which he depended to establish the fact that Wirz had by his own acts been guilty of willful murder. As a result Wirz evidently concluded that no such evidence had been found, and on repeated occasions he addressed the Court through his counsel, saying that he was ready to admit the truth of evidence that had been presented, but that he was not personally responsible for the conditions shown to have existed in the prison; that he had simply acted in conformity to the orders of his superior officers, and should not be held responsible for them; and he therefore asked for an acquittal and discharge. These requests, one after another, were denied by the Court.

Early in the trial Wirz became sick, and a lounge was brought into the room on which he was permitted to recline; and during many days of the trial he lay on the lounge with his handkerchief over his face, apparently oblivious to all that was taking place. Finally a witness was placed on the stand who told of his escape from the stockade in company with a comrade whose name he did not know, of their pursuit by the blood hounds, and of their recapture and return to the Confederate camp. He said that when brought to Wirz's tent and their escape and recapture was reported Wirz became furious, and rushing from his tent he began cursing and damning them for having attempted to escape. The comrade, who was nearly dead from exposure and suffering, had staked his last effort on this attempt to regain his freedom, and the recapture had discouraged him completely and caused him to feel that death itself was preferable to a return to the stockade. Like a caged animal he turned on Wirz and gave him curse for curse, challenged him to do his worst, and told him he would rather die than return to the hell hole from which he had escaped. This so enraged Wirz that he sprang at the man, knocked him down with his revolver, and then kicked and trampled him with his boot

The Court (all the members being unanimous in the judgment) found the prisoner guilty of conspiracy to injure the health and destroy the lives of Union soldiers, prisoners of war and of ten of the thirteen specifications of murder in violation of the laws and customs of war.

The sentence of the Court was death by hanging. President Johnson approved both the finding and sentence and on the 10th day of November, 1865, Captain Wirz was executed at the old Capitol prison at Washington and his body interred in the arsenal grounds by the side of Atzerodt, one of the conspirators in the assassination of President Lincoln.

THE TRIAL.¹

Before a Military Commission Convened at Washington, D. C., August, 1865.

Major General L. WALLACE,² *President.*

Major General G. MOTT.³

Major General J. W. GEARY.⁴

Major General L. THOMAS.⁵

Brigadier General FRANCIS FESSENDEN.⁶

Brigadier General JOHN F. BALLIER.⁷

Brigadier General EDWARD S. BRAGG.⁸

Colonel T. ALLCOCK.⁹

Lieutenant Colonel J. H. STIBBS.¹⁰

heels until he was dead. When the witness began this story Wirz became interested. First he removed the handkerchief from his face; then propped himself on one elbow; and as the story progressed he gradually rose up until he stood erect. His fists were clenched, his eyes were fairly bursting from their sockets, and his face presented a horrible appearance. As the witness finished his story Wirz fairly screamed at him: "You say I killed that man." "Yes, sir," replied the witness. "You tramped him to death in my presence." At this Wirz threw up his hands and exclaimed, "Oh my Gott," and fell back in a faint on the lounge."

¹ *Bibliography.* "Trial of Henry Wirz. Executive Documents No. 23; 40th Congress, 2nd Session."

"The Demon of Andersonville or the Trial of Wirz. Philadelphia. Barclay & Co., 602 Arch Street. 1865."

"The Southern Side or Andersonville Prison. Compiled from

August 23.¹¹

The COURT met today at 11 a. m. and the *Prisoner* was brought in by a military guard.

Colonel N. P. Chipman,¹² Judge Advocate and *Major A. A. Hosmer*,¹³ Assistant Judge Advocate for the government.

James Hughes,¹⁴ *James W. Denver*,¹⁵ *Charles F. Peck*¹⁶ and *Louis Schade*¹⁷ for the *Prisoner*.

Judge Advocate Chipman called the roll of members, all of whom answered to their names. He then read an order from the War Department, dated 22nd of August, that the Military Commission, which was to convene on the 20th instant, by order of the President of the United States, was dissolved; and another order, dated yesterday, convening a Special Commission, to assemble today, at eleven o'clock, for the trial of Henry Wirz, and such other prisoners as may be brought before it, the detail of officers being the same as that of the previous commission.

Judge Advocate Chipman asked the prisoner whether he had any objection to the members of the Court.

Mr. Peck said that there was none, personally, to the members.

Col. Chipman. You are charged under the name of Henry Wirz. Is that your name?

The prisoner said it was.

Col. Chipman. The charges and specifications will now be read.

MAJOR GENERAL WALLACE. Let the prisoner stand up.

Captain Wirz rose to his feet, when the charges and specifications were read.^{17a}

the official documents. By R. Randolph Stevenson, M. D., Baltimore. Turnbull Brothers, 1876."

*"A Narrative of Andersonville, drawn from the evidence elicited on the Trial of Henry Wirz, the Jailer. With the Argument of Col. N. P. Chipman, Judge Advocate. By Ambrose Spencer. New York: Harper & Brothers, Publishers, Franklin Square. 1866."

*"Andersonville and the Trial of Henry Wirz. By John Howard Stibbs, sole survivor of the Commission that tried Henry Wirz, Brevet Brigadier General United States Volunteers, Colonel of the Twelfth Iowa Infantry Volunteers. Reprinted from the January 1911, number of the Iowa Journal of History and Politics, for the George H. Thomas Post Number Five, of the City of Chicago, the Department of Illinois Grand Army of the Republic."

² See *Ante*, p. 33.

³ MOTT, GERSHON. (1822-1884.) Born Trenton, N. J. Began commercial life in New York City, but went to Mexican War as Second Lieutenant of Cavalry; Collector, Lamberton, N. J., 1855; Lieutenant Colonel New Jersey Volunteers, 1861; Brigadier General, 1862; Major General, 1864. Resigned from Army, 1866; Paymaster Camden and Amboy Railroad, 1866; Major General

The first charge was maliciously, wilfully and traitorously, and in aid of the then existing armed rebellion against the United States of America, on or before the first day of March, A. D., 1864, and on divers other days between that day and the 10th day of April, 1865, combining, confederating and conspiring, together with John H. Winder, Richard B. Winder, Joseph White, W. S. Winder, R. R. Stevenson and others unknown, to injure the health and destroy the lives of soldiers in the military service of the United States, then held and being prisoners of war within the lines of the so-called Confederate States, and in the military prisons thereof, to the end that the armies of the United States might be weakened and impaired, in violation of the laws and customs of war.

The second charge, of which there were thirteen specifications, was of murder, in violation of the rules of war.

New Jersey National Guard, 1873; State Treasurer, 1875; Keeper of State Prison, 1876-1881. Died in New York City.

⁴GEARY, JOHN WHITE. (1819-1873.) Born Mt. Pleasant, Pa. Removed to California in 1849, and was appointed Postmaster of San Francisco and became its first Alcalde and its first Mayor; Governor of the Territory of Kansas, 1856-1857. Returned to Pennsylvania and raised and equipped a regiment of volunteers; Brigadier General, 1862; Military Governor of Savannah, Ga., 1864; Governor of Pennsylvania, 1867-1873. Died in Harrisburg, Pa.

⁵THOMAS, LORENZO. (1804-1875.) Born Newcastle, Del; graduated West Point, 1823; Chief of Staff in Mexican War; Chief of Staff to General Scott, 1853; Brigadier General, 1861; Major General, 1865; retired from army, 1868. Died in Washington, D. C.

⁶FESSENDEN, FRANCIS. (1839-1906.) Born and died in Portland, Maine. Graduated Bowdoin, 1858, and studied law at New York and Harvard. Captain U. S. Infantry, 1861, and was severely wounded at the battle of Shiloh; Colonel Maine Volunteers, 1863; Brigadier General and afterwards Major General. Retired from the army in 1866. Mayor of Portland; Secretary of the Treasury.

⁷BALLIER, JOHN FREDERICK. Born in Germany. Served in the Mexican War as Lieutenant in the Pennsylvania Volunteers and in the Civil War he was Colonel of Pennsylvania Regiment. In 1864 he was made Brevet Brigadier General of Volunteers. Died in Pennsylvania.

⁸BRAGG, EDWARD STUYVESANT. (1827-1912.) Born Unadilla, N. Y.; Student Geneva and Hobart Colleges (LL. D. Hobart, 1898, Appleton, 1902); studied law in office of Charles C. Noble in Unadilla. Admitted to bar, 1848; practiced two years in office of Judge Noble. Removed to Fond du Lac, Wisconsin, 1850. District Attorney Fond du Lac County, 1854-1856. Member of Charleston Convention, 1860. Entered Civil War as Captain and mustered out as Brigadier General of Volunteers, October 9, 1865. Delegate to Democratic Convention, 1861, 1872, 1884, 1892, 1896, Union Convention, Philadelphia, 1866. Postmaster Fond du Lac, 1866. Mem-

Mr. Hughes said he saw by a morning paper that the Court was to meet today, and it was mere accident that he came here. The authorities were ample that the prisoner should have time to plead and prepare for defense, and to consult counsel, and, on the prisoner's behalf, he asked the Commission to give him sufficient time.

ber of State Senate, 1868-1869. Member 45th, 46th, 47th Congresses (1877-1883) and 49th Congress (1885-1887). Minister to Mexico, 1888-1889. Consul-General at Havana, May-September, 1902; at Hongkong, China, 1902-1906. Resumed practice of law in Fond du Lac, where he died.

⁹ ALLCOCK, THOMAS. (1825-1891. Born in England; Major New York Artillery; Lieutenant Colonel; 1863. He was made a Brigadier General for gallant and meritorious services in the campaign against Richmond and in the battles before Petersburg.

¹⁰ STIBBS, JOHN HOWARD. (1840-1916.) Born Wayne County, O.; entered army with Iowa Volunteers, 1861, as a private; Captain, 1861; Major, 1863; Colonel, 1865; Brigadier General, 1865; retired from army, 1866; Special Examiner Pension Bureau, Chicago, 1911-1916.

¹¹ The Commission appointed by the President of the United States "for the trial of Henry Wirz and such other prisoners as may be brought before it" was ordered to assemble and did so meet in the Court of Claims room at the Capitol on August 21st. Here Wirz was arraigned, the charges read to him and he pleaded not guilty. On August 22 this commission was dissolved and a new one called to meet on August 24. The personnel of the commissions were the same except that General E. S. Bragg, who was named in both did not take part in the hearings and findings of the second Commission. And the charges and specifications were amended by striking from them the names of several persons—among others, Jefferson Davis, Robert E. Lee, and James A. Seddon, who had been named as having conspired with Wirz to destroy the lives of Union soldiers.

¹² CHIPMAN, NORTON PARKER. Born Milford, O., 1836. Educated Washington College and Mt. Pleasant Academy, Iowa. LL. B., Cincinnati Law School, 1859. Began practice at Washington, Ia., 1859. In Civil War promoted to Colonel and mustered out November 30, 1865, as Brigadier General of Volunteers for meritorious service in the Bureau of Military Justice. Resumed law practice. Secretary Territorial government, District of Columbia, 1871, by President Grant. Delegate to Congress from District of Columbia, 1871-1875. Removed to California, 1875, and engaged in law practice. Commissioner Supreme Court of California, 1897-1905. Presiding Justice, District Court of Appeals, 3d District (California), 1905. Ex-President California State Board of Trade. Director of California Development Board. Author of "Tragedy of Andersonville, 1911."

¹³ HOSMER, ADDISON AUGUSTUS (1833-1902.) Born Oakdale, Mass. Student Union College 1857, but left in senior year to com-

The prisoner, without any fault of his, would now be under the necessity of employing new counsel, as he was inclined to think that he had rendered all the professional service required by his obligations. It was necessary for him to give the reasons for withdrawing from the case, but this ought not to prevent the Court from determining the question of giving further time. This was a new

mence study of law. In Civil War saw active service at Antietam on staff of General Sturgis. Appointed by President Lincoln, Judge Advocate with the rank of Major in regular army, and as such was often Acting Judge Advocate General. Given brevet rank of Colonel for distinguished service; resigned from army to practice law in Washington, D. C., 1866, but soon, on account of ill health, gave up active practice and divided time between Washington and his country place in Maryland; was President of the Army and Navy Club, Washington, and a prominent member of the Loyal Legion. Died in Washington.

¹⁴ HUGHES, JAMES. (1823-1873.) Born Hampstead, Md. Educated State University, Indiana. Admitted to bar, Bloomington, Ind., 1842. In Mexican War, was 1st Lieutenant of the 16th Regiment of U. S. Infantry; returned to Bloomington; edited "North-western Gazette;" Circuit Judge, 1882; professor of law, University of Indiana, 1853-1856; Representative from Indiana to 35th Congress (1857-1859); Judge of Court of Claims, 1861-1865; cotton agent for the Treasury Department (1866-1868), abandoned in 1866; his practice at Washington, and elected to Indiana Senate 1868; returned to Washington, and resumed his law practice, 1869. Died at Bladensburg, Md.

¹⁵ DENVER, JAMES WILSON. (1817-1892.) Born Winchester, Va. Moved to Clinton Co., O., 1831, and to Missouri in 1841, where he taught school. Returned to Ohio and studied law in Wilmington, (O.). Graduated Cincinnati Law School, 1844. Admitted to bar, 1844. Practiced at Xenia, O., where he edited "The Thomas Jefferson" (a Democratic newspaper). Practiced at Plattsburg and at Platte City, Mo., until outbreak of Mexican War. Appointed Captain of 12th Regiment, U. S. Infantry, and accompanied General Scott in his campaign into Mexico; resumed practice at Platte City where he edited the "Platte Argus;" removed to California, 1849, and engaged in mining and trading. Elected to the California State Senate, 1852. While Senator, was challenged to a duel by General Gilbert, editor of "Alta California;" Gilbert was killed. Secretary of State, California, 1853; member 34th Congress (1855-1857); Commissioner of Indian Affairs, 1857; Governor of Kansas, 1858. City of Denver, Colorado, was at that time included in Territory of Kansas; it was established while Denver was the Governor and named for him. Resigned governorship and reappointed Commissioner of Indian Affairs. Returned to California. In 1861 entered Union army and was commissioned Brigadier General. Resigned from army, 1863. 1866 Delegate to the Cleveland "Soldiers' Convention." 1866 took an active part in organizing the "Veterans

Court, just brought into being. The Court would not subject the prisoner to the disadvantages of the reorganization of the Court, and deny him the benefits which might result from it.

Mr. Peck. The recent action will bring up an entirely new class of defense, and will necessarily take up more time.

Mr. Hughes here walked out of the courtroom.

Mr. Peck. As the prisoner has once been arraigned, and his life placed in jeopardy, he is entitled now either to an acquittal or

of the Mexican War," and was president of the society until his death. From 1863-1892, practiced law in Washington, D. C., and Wilmington. Died in Washington.

¹⁶ PECK, CHARLES F. Was son of Ebenezer Peck, Judge of the Court of Claims. He practiced law in Washington until about 1884. In noticing the death of Judge Peck, the *Chicago Tribune*, of May 26, 1881, says: "His second son, Charles F., is now practicing law in Washington, and is one of the chief promoters of the Mutual Union Telegraph Co."

¹⁷ SCHADE, LOUIS. (1829-1903.) Born Berlin, Germany. Educated at Berlin University. Took an active part in the revolution of 1848-1851. Came to America and located in Washington, D. C., 1851. Assistant Librarian of the Smithsonian Institution, 1853. Translator and statistician, State Department, 1854. At request of Stephen A. Douglas (whose protege he was) removed to Chicago, where he edited the Douglas' organ, "The National Demokrat" (later "The Union"). Removed to Burlington, Ia., 1858, where he was admitted to bar. Returned to Washington, 1859. Editor of "Washington Sentinel" 1873-1903. Author of "The Immigration Into the U. S. A." (1856), a statistical review. At one time he owned and lived in the house in which Lincoln died and which he sold (1894) to the Memorial Society, which preserves it now as a museum.

CHARGE 1.

^{17a} Maliciously, willfully, and traitorously, and in aid of the then existing armed rebellion against the United States of America, on or before the first day of March, A. D. 1864, and on divers other days between that day and the tenth day of April, 1865, combining, confederating and conspiring together with John H. Winder, Richard B. Winder, Joseph White, W. S. Winder, R. R. Stevenson and others unknown, to injure the health and destroy the lives of soldiers in the military service of the United States, then held and being prisoners of war within the lines of the so-called Confederate States and in the military prisons thereof, to the end that the armies of the United States might be weakened and impaired, in violation of the laws and customs of war.

Specification.

In this, that he, the said Henry Wirz, did combine, confederate and conspire with them, the said John H. Winder, Richard B. Winder, Joseph White, W. S. Winder, R. R. Stevenson, and others

trial on the former charges. All the authorities, civil and military, are conclusive on the point that, if not acquitted, the prisoner, under the circumstances, is entitled to all the benefits of an acquittal.

The PRESIDENT. Is Mr. Peck still here in the relation of counsel.

Mr. Peck. No.

The PRESIDENT. The Judge Advocate is here as the counsel of

whose names are unknown, citizens of the United States aforesaid, and who were then engaged in armed rebellion against the United States, maliciously, traitorously, and in violation of the laws of war, to impair and injure the health and to destroy the lives—by subjecting to torture and great suffering, by confining in unhealthy and unwholesome quarters, by exposing to the inclemency of winter and to the dews and burning sun of summer, by compelling the use of impure water, and by furnishing insufficient and unwholesome food—of large numbers of Federal prisoners, towit, the number of thirty thousand, soldiers in the military service of the United States of America, held as prisoners of war at Andersonville, in the State of Georgia, within the lines of the so-called Confederate States, on or before the first day of March, A. D. 1864, and at divers times between that day and the tenth day of April, A. D. 1865, to the end that the armies of the United States might be weakened and impaired, and the insurgents engaged in armed rebellion against the United States might be aided and comforted: And he, the said Henry Wirz, an officer in the military service of the so-called Confederate States, being then and there commandant of a military prison at Andersonville, in the State of Georgia, located by authority of the so-called Confederate States for the confinement of prisoners of war, and as such commandant fully clothed with authority, and in duty bound to treat, care and provide for such prisoners held as aforesaid as were or might be placed in his custody, according to the law of war, did, in furtherance of such combination, confederation and conspiracy, and incited thereunto by them, the said John H. Winder, Richard B. Winder, Joseph White, W. S. Winder, R. R. Stevenson and others whose names are unknown, maliciously, wickedly, and traitorously confine a large number of such prisoners of war, soldiers in the military service of the United States, to the amount of thirty thousand men, in unhealthy and unwholesome quarters, in a close and small area of ground, wholly inadequate to their wants and destructive to their health, which he well knew and intended; and while there so confined, during the time aforesaid, did, in furtherance of his evil design, and in aid of the said conspiracy, willfully and maliciously neglect to furnish tents, barracks or other shelter sufficient for their protection from the inclemency of winter and the dews and burning sun of summer; and with such evil intent did take and cause to be taken from them their clothing, blankets, camp equipage and other property of which they were possessed at the time of being placed in his

the defendant; the gentlemen and his associates having withdrawn.

Col. Chipman. As the responsibility now attaches to me of appearing for the prisoner, I ask an adjournment until tomorrow.

August 24.

The Judge Advocate Chipman asked the prisoner if he had counsel.

Mr. Schade said he had been engaged as counsel with Messrs. Hughes, Denver and Peck. Those gentlemen had the case in hand

custody; and with like malice and evil intent, did refuse to furnish or cause to be furnished, food either of a quality or quantity sufficient to preserve health and sustain life; and did refuse and neglect to furnish wood sufficient for cooking in summer, and to keep the said prisoners warm in winter, and did compel the said prisoners to subsist upon unwholesome food, and that in limited quantities entirely inadequate to sustain health, which he well knew; and did compel the said prisoners to use unwholesome water, reeking with the filth and garbage of the prison and prison guard, and the offal and drainage of the cook-house of said prison, whereby the prisoners became greatly reduced in their bodily strength, and emaciated and injured in their bodily health, their minds impaired, and their intellects broken; and many of them, towit, the number of ten thousand, whose names are unknown, sickened and died by reason thereof, which he, the said Henry Wirz, then and there well knew and intended; and so knowing and evilly intending, did refuse and neglect to provide proper lodgings, food, or nourishment for the sick, and necessary medicine and medical attendance for the restoration of their health, and did knowingly, willfully and maliciously, in furtherance of his evil designs, permit them to languish and die from want of care and proper treatment; and the said Henry Wirz, still pursuing his evil purposes, did permit to remain in the said prison, among the emaciated sick and languishing living, the bodies of the dead, until they became corrupt and loathsome, and filled the air with fetid and noxious exhalations, and thereby greatly increased the unwholesomeness of the prison, inso-much that great numbers of said prisoners, towit, the number of one thousand, whose names are unknown, sickened and died by reason thereof. And the said Henry Wirz, still pursuing his wicked and cruel purpose, wholly disregarding the usages of civilized warfare, did, at the time and place aforesaid, maliciously and willfully subject the prisoners aforesaid to cruel, unusual, and infamous punishment upon slight, trivial and fictitious pretenses, by fastening large balls of iron to their feet, and binding large numbers of the prisoners aforesaid closely together, with large chains around their necks and feet so that they walked with the greatest difficulty; and, being so confined, were subjected to the burning rays of the sun often without food or drink for hours and even days, from which said cruel treatment large numbers, towit, the number of one hundred, whose names are unknown, sickened, fainted, and died: And

three or four weeks, but he was not so fortunate, having been called in at a late hour, they had withdrawn and left him all alone. He would have followed them if it had not been that he had a regard for his honor; but being an adopted citizen, like the prisoner, he

he, the said Wirz, did further cruelly treat and injure said prisoners by maliciously confining them within an instrument of torture called "the stocks," thus depriving them of the use of their limbs, and forcing them to lie, sit and stand for many hours without the power of changing position, and being without food or drink, in consequence of which many, to wit, the number of thirty, whose names are unknown, sickened and died. And he, the said Wirz, still wickedly pursuing his evil purpose, did establish and cause to be designated within the prison inclosure containing said prisoners a "dead line," being a line around the inner face of the stockade, or wall inclosing said prison, and about twenty feet distant from and within said stockade; and having so established said dead line, which was in many places an imaginary line, and in many other places marked by insecure and shifting strips of boards nailed upon the top of small and insecure stakes or posts, he, the said Wirz, instructed the prison guard stationed around the top of said stockade to fire upon and kill any of the prisoners aforesaid who might touch, fall upon, pass over, or under, or across the said "dead line." Pursuant to which said orders and instructions, maliciously and needlessly given by said Wirz, the said prison guard did fire upon and kill a large number of said prisoners, to wit, the number of about three hundred. And the said Wirz, still pursuing his evil purpose, did keep and use ferocious and bloodthirsty beasts, dangerous to human life, called bloodhounds, to hunt down prisoners of war aforesaid who made their escape from his custody, and did, then and there, willfully and maliciously suffer, incite and encourage the said beasts to seize, tear, mangle and maim the bodies and limbs of said fugitive prisoners of war, which the said beasts, incited as aforesaid, then and there did, whereby a large number of said prisoners of war who, during the time aforesaid, made their escape and were recaptured, and were by the said beasts then and there cruelly and inhumanly injured, insomuch that many of said prisoners, to-wit, the number of about fifty died: And the said Wirz, still pursuing his wicked purpose, and still aiding in carrying out said conspiracy, did use and cause to be used, for the pretended purpose of vaccination, impure and poisonous vaccine matter, which said impure and poisonous matter was then and there, by the direction and order of said Wirz, maliciously, cruelly, and wickedly deposited in the arms of many of said prisoners, by reason of which large numbers of them, to wit, one hundred, lost the use of their arms, and many of them, to wit, about the number of two hundred, were so injured that they soon thereafter died: All of which he, the said Henry Wirz, well knew and maliciously intended, and in aid of the then existing rebellion against the United States, with the view to assist in weakening and impairing the

never would forsake one so helpless, especially as he believed from the testimony in his possession, that the defendant was innocent; he at the same time was convinced of his inability to alone compete with the array of talent on the other side. He fully appreciated the momentousness of the issue at stake, and the high responsibility which rested upon him. He respectfully asked the Court for a

armies of the United States, and in furtherance of the said conspiracy, and with the full knowledge, consent and connivance of his co-conspirators aforesaid, he, the said Wirz, then and there did.

CHARGE 2.

Murder, in violation of the laws and customs of war.

Specification 1.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the eighth day of July, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, willfully and of his malice aforethought, did make an assault, and he, the said Henry Wirz, a certain pistol called a revolver then and there loaded and charged with gunpowder and bullets, which said pistol the said Henry Wirz in his hand then and there held, to, against, and upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's custody as a prisoner of war, whose name is unknown, then and there feloniously, and of his malice aforethought, did shoot and discharge, inflicting upon the body of the soldier aforesaid a mortal wound with the pistol aforesaid, in consequence of which said mortal wound, murderously inflicted by the said Henry Wirz, the said soldier thereafter, to wit, on the ninth day of July, A. D. 1864, died.

Specification 2.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the twentieth day of September, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, willfully, and of his malice aforethought, did jump upon, stamp, kick, bruise and otherwise injure with the heels of his boots, a soldier belonging to the army of the United States in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, of which said stamping, kicking and bruising, maliciously done and inflicted by the said Wirz, he, the said

postponement of the trial for eight days, so that the prisoner might procure additional counsel, and his counsel time to examine into the facts of the case, believing as he did, that justice and right are the chief ingredients of American liberty, and that under the Government, and under the present enlightened statesmen who now controlled the destinies of the nation, no citizen, no matter how humble, should be deprived of the right of a fair and impartial

soldier, soon thereafter, to wit, on the twentieth day of September, A. D. 1864, died.

Specification 3.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the thirteenth day of June, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did make an assault, and he, the said Henry Wirz, a certain pistol called a revolver then and there loaded and charged with gunpowder and bullets, which said pistol the said Henry Wirz in his hand then and there had and held, to, against, and upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, then and there feloniously, and of his malice aforethought, did shoot and discharge, inflicting upon the body of the soldier aforesaid a mortal wound with the pistol aforesaid, in consequence of which said mortal wound, murderously inflicted by the said Henry Wirz, the said soldier immediately, to wit, on the day aforesaid, died.

Specification 4.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the thirtieth day of May, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did make an assault, and he, the said Henry Wirz, a certain pistol called a revolver then and there loaded and charged with gunpowder and bullets, which said pistol the said Henry Wirz in his hand then and there had and held, to, against, and upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, then and there feloniously, and of his malice aforethought, did shoot and discharge, inflicting upon the body of the soldier aforesaid a mortal wound with the pistol aforesaid, in consequence of which

trial. The present excitement will soon pass away, and if we do a harsh thing now, history, the great and impartial judge, will soon punish us for the wrong.

Col. Chipman said the Court were aware that the gentleman who had just addressed them was associated with the retiring counsel

said mortal wound, murderously inflicted by the said Henry Wirz, the said soldier, on the thirtieth day of May, A. D. 1864, died.

Specification 5.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the twentieth day of August, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did confine and bind within an instrument of torture called "the stocks," a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, in consequence of which said cruel treatment, maliciously and murderously inflicted as aforesaid, he, the said soldier, soon thereafter, to wit, on the thirtieth day of August, A. D. 1864, died.

Specification 6.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the first day of February, A. D. 1865, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did confine and bind within an instrument of torture called the "stocks," a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, in consequence of which said cruel treatment, maliciously and murderously inflicted as aforesaid, he, the said soldier, soon thereafter, to wit, on the sixth day of February, A. D. 1864, died.

Specification 7.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the twentieth day of July, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting

for some time. It could not, therefore, be properly presumed that he was uninformed of the proceedings and facts in this case; the Court were bound to believe that he was prepared to go on with the trial.

The COURT ruled that the prisoner should at once plead.

O. S. Baker volunteered his services as assistant counsel for the defense.

Mr. Schade presented his pleas. First, that the prisoner is entitled to his discharge, in consequence of the promise of Captain

as said commandant, feloniously, and of his malice aforethought, did fasten and chain together several persons, soldiers belonging to the army of the United States in his, the said Henry Wirz's, custody as prisoners of war, whose names are unknown, binding the necks and feet of said prisoners closely together, and compelling them to carry great burdens, towit, large iron balls chained to their feet, so that, in consequence of the said cruel treatment inflicted upon them by the said Henry Wirz as aforesaid, one of said soldiers, a prisoner of war as aforesaid, whose name is unknown, on the twenty-fifth day of July, A. D. 1864, died.

Specification 8.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, or on about the fifteenth day of May, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, willfully, and of his malice aforethought, did order a rebel soldier whose name is unknown, then on duty as a sentinel or guard to the prison of which said Henry Wirz was commandant as aforesaid, to fire upon a soldier belonging to the army of the United States in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown; and in pursuance of said order so as aforesaid, maliciously and murderously given as aforesaid, he, the said rebel soldier, did, with a musket loaded with gunpowder and bullet, then and there fire at the said soldier so as aforesaid held as a prisoner of war, inflicting upon him a mortal wound with the musket aforesaid, of which he, the said prisoner, soon thereafter, towit, on the day aforesaid, died.

Specification 9.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the first day of July A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said

Noyes, of the staff of Brevet Major General Wilson, in command at Macon, Georgia, that if he (Wirz) would accompany him to headquarters for the purpose of giving certain information, he should not be arrested or held a prisoner. The accused accepted

commandant, feloniously, and of his malice aforethought, did order a rebel soldier, whose name is unknown, then on duty as a sentinel or guard to the prison of which said Wirz was commandant as aforesaid, to fire upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown; and in pursuance of said order so as aforesaid, maliciously and murderously given as aforesaid, he, the said rebel soldier, did, with a musket loaded with gunpowder and bullet, then and there fire at the said soldier so as aforesaid held as a prisoner of war, inflicting upon him a mortal wound with the said musket, of which he, the said prisoner, soon thereafter, to-wit, on the day aforesaid, died.

Specification 10.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the twentieth day of August, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did order a rebel soldier, whose name is unknown, then on duty as a sentinel or guard to the prison of which said Wirz was commandant as aforesaid, to fire upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown; and in pursuance of said order so as aforesaid, maliciously and murderously given as aforesaid, he, the said rebel soldier, did, with a musket loaded with gunpowder and bullet, then and there fire at the said soldier so as aforesaid held as a prisoner of war, inflicting upon him a mortal wound with the said musket, of which he, the said prisoner, soon thereafter, to-wit, on the day aforesaid, died.

Specification 11.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the first day of July, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did cause, incite and urge certain ferocious and bloodthirsty animals, called

the offer, and claims to have since been held in violation of the pledge of his personal liberty.

Second. The prisoner denies the jurisdiction of the Court to try him on these charges and specification.

Third. That the war is ended and civil law restored, and that there is no military law under which he can be tried.

Fourth. He moves to quash the charges and specifications upon the ground of their vagueness and indefiniteness concerning the time, place and manner of the offenses charged.

Fifth. That on the 21st of August, 1865, he was arraigned and put on trial, and pleaded not guilty to these charges before a Military Commission composed like this; that the Commission was

bloodhounds to pursue, attack, wound, and tear in pieces a soldier belonging to the army of the United States in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, and in consequence thereof the said bloodhounds did then and there, with the knowledge, encouragement and instigation of him, the said Wirz, maliciously and murderously given by him, attack and mortally wound the said soldier, in consequence of which said mortal wound he, the said prisoner, soon thereafter, to wit, on the sixth day of July, A. D. 1864, died.

Specification 12.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the twenty-seventh day of July, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did order a rebel soldier, whose name is unknown, then on duty as a sentinel or guard to the prison of which said Wirz was commandant as aforesaid, to fire upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, and in pursuance of said order so as aforesaid, maliciously and murderously given as aforesaid, he, the said rebel soldier, did, with a musket loaded with gunpowder and bullet, then and there fire at the said soldier so as aforesaid held as a prisoner of war, inflicting upon him a mortal wound with the said musket, of which said mortal wound he, the said prisoner, soon thereafter, to wit, on the day aforesaid, died.

Specification 13.

In this, that the said Henry Wirz, an officer in the military service of the so-called Confederate States of America, at Andersonville, in the State of Georgia, on or about the third day of August, A. D. 1864, then and there being commandant of a prison there located by the authority of the said so-called Confederate States

broken up without this agency or consent, and adjourned without a record. Having been once put in jeopardy of these charges, he cannot now be arraigned again as before, but is entitled to the benefit of an acquittal.

Sixth. That he should be discharged because he was an officer of the so-called Southern Confederacy, and entitled to the benefit of the terms agreed to between Generals Sherman and Johnston, which were complied with by him, and in accordance with which he is ready to give his obligation in writing not to take up arms against the Government.

Mr. Baker said he was ready to put in the plea of not guilty alone, if the Court would let the argument on the pleas go over.

The *Judge Advocate* said that aside from the question of jurisdiction there remained but four questions: First, a motion to quash the charges and specifications for vagueness and indefiniteness. He would not make any remarks upon the subject. Second, that the Court constituted of the same members, having taken cognizance of the case, and the prisoner having been once arraigned and his life put in jeopardy, therefore the Court could not now proceed to try the prisoner. In reply to this, he would only read an official opinion from Judge Holt, the chief of the Bureau of Military Justice, who is the law expounder so far as the army is concerned, and all cases arising under it. This opinion is in substance that a party who has been arraigned should not be regarded as having been tried until the Government has pursued the case to a conclusion, and he has been actually acquitted or convicted, and the judgment of the Court thereon announced. There must be a formal acquittal or conviction.

The next was, that the prisoner should not be held to trial, but ought to be discharged, because Captain Noyes, an officer of the staff of General Wilson, had promised Captain Wirz that if he should give certain information, which he did, to General Wilson, he should have safe conduct, going and returning, to his home, and the final question was, that the agreement between Generals Johnston and Sherman absolved the prisoner from the consequence of the violation of the laws of war.

If there was a violation of a compact between a staff officer and for the confinement of prisoners of war taken and held as such from the armies of the United States of America, while acting as said commandant, feloniously, and of his malice aforethought, did make an assault upon a soldier belonging to the army of the United States, in his, the said Henry Wirz's, custody as a prisoner of war, whose name is unknown, and with a pistol called a revolver, then and there held in the hands of the said Wirz, did beat and bruise said soldier upon the head, shoulders and breast, inflicting thereby mortal wounds, from which said beating and bruising aforesaid, and mortal wounds caused thereby, the said soldier soon thereafter, to wit, on the fourth day of August, A. D. 1864, died.

Wirz, the latter's remedy was against General Wilson, and not before this Court. If, after the defendant was brought to General Wilson, it was discovered that Wirz was guilty of great crimes, he would have been answerable to his superior for letting him off. General Wilson had no power to absolve the prisoner from crime. A promise of safeguard did not work a pardon of offense. The plea presents the case of a police officer, who says, "Come with me to the magistrate; I will see that you are not injured." The magistrate, discovering that the man is guilty of a crime, takes means for the trial of the prisoner. It was not alleged that Captain Noyes acted on the instructions even of General Wilson. The cases were similar therefore. The plea should be overruled. The Court must bear in mind that the plea in bar does not assume that there has in this case been a formal acquittal or conviction. There now remains only one plea based on pardon, according to Archibald's and Wharton's criminal law. The plea must set out the form of pardon granted. In the absence of this the plea of the counsel is, therefore, bad. It was very certain, by the action of the Government and the opinion of the Attorney General, that neither the amnesty proclamation of the President, nor the terms of surrender between Generals Grant and Lee and Sherman and Johnston, were intended to pardon those who had been guilty of great crimes.

The later proclamation of the President showed that these capitulations did not work pardon to those coming within their terms, else why did they see men who had been engaged in the rebellion every day besieging the President and asking pardon? It would be recollected that a judge of the United States Court had charged the jury to inquire into offenses under the rebellion, and in the criminal court of this district the Attorney General pronounced the rebellion still existing.

Suppose the assassin of the late President had been a rebel soldier, and after committing the act had escaped and returned to Johnston's army, was it supposed the terms of the capitulation would prevent the assassin from being brought to trial?

Mr. Baker said he supposed that according to the universal custom of law proceedings they were required to say something in answer to their adversaries.

In the first place the prisoner was an humble servant, in the employment and under orders of an officer of the so-called Southern Confederacy; distasteful as it might be, we must look upon it as a fact that there was a civil war for four long and distressful years. The prisoner was a servant and instrument in the hands of the Southern authorities, as such he had charge of our prisoners. In defending the prisoner he must do his duty. The defendant, though criminally charged, was not convicted. He is charged with atrocious crimes which may never be proven to be facts. It would be a most inhuman thing to take it for granted at the threshold that he is guilty.

The charges are merely on paper, and it was the duty of the

Court to investigate and see whether they are true; it was alleged that he as an individual starved the Union prisoners; his counsel deny that he did at all, but he was there; the Union prisoners were starved, some came away, and some never returned; would any member of this Court say that any lieutenant or major-general in the Union army should be held accountable to any tribunal for every outrage and indecency, for ever murder under the laws of war, perhaps unknown to them, perhaps, as he had seen it, under their very eyes?

In some instances they might, but not for all the atrocities. The charge against the prisoner is that he committed these acts. If one half of what is alleged against the prisoner should be proven true, he should suffer to the full extent of the law. The prisoner was invited to come within the Union lines, and was promised he should have safe conduct to depart. What justification could there be for a violation of the usages of civilized warfare? Where would they find the pledge of a commanding officer violated?

The Judge-Advocate had said a commanding general can violate or set aside his orders, but if any commanding general well deserving of his stars should invite an humble servant to come within his lines, and should then violate his pledges of safe conduct, and hold him a prisoner, and try him for murder, would it not be one of the most atrocious violations of the rules of war and of good faith? Where did the Judge-Advocate get his authority? Certainly not in the books or under the authority of the United States.

This was one of the points of the defense. The prisoner was held wrongfully. The counsel would say this with respect. This prisoner was enticed within our lines, and the pledge given to him of safe conduct broken. There might be an excuse for the officer breaking his pledge, but this should inure to the benefit of the accused. The Judge-Advocate compared the bringing of the prisoner under promise he shall not be harmed, into our lines, to a constable enticing a party before a magistrate, who holds him for trial; most assuredly and certainly the gentleman did not design to bring this cause to such a low and degrading condition. But the difficulty is that the magistrate has no right to make the promise, and no right to discharge a criminal brought before him, while a commanding general has the right to make the promise, and then, according to the law of God and man, he is required to respect it. As to the plea of unconstitutionality of trying a man after once being put on his trial, he would not argue the point. He could not twice be put in jeopardy of his life. If the Court should concur in his pleas he should be gratified; if not he should be content to go on with the case.

The Court was cleared for deliberation, the doors were reopened and it was announced by the PRESIDENT that the Court overruled the pleas, except as to jurisdiction which is not yet argued.

Mr. Baker. We plead the general issue, *not guilty* of the charges and specifications.

THE WITNESSES FOR THE GOVERNMENT.

(Where the evidence of a witness has been fully quoted by the Judge-Advocate in his argument, *post* pp. 750, 872, it has been omitted in this summary.)

Martin E. Robinson. Am clerk day; asked him if it was the letter to the Military Commission. This letter he wrote to General Wilson; letter was shown me last Sun- he replied it was a true copy.

“Andersonville, Ga., May 7, 1865.

“General: It is with great reluctance that I address you these lines, being fully aware how little time is left you to attend to such matters as I now have the honor to lay before you, and if I could see any other way to accomplish my object I would not intrude upon you. I am a native of Switzerland, and was before the war a citizen of Louisiana, by profession a physician. Like hundreds and thousands of others, I was carried away by the maelstrom of excitement, and joined the Southern army. I was very seriously wounded at the battle of the Seven Pines, near Richmond, Va., and have nearly lost the use of my right arm. Unfit for field duty, I was ordered to report to Brevet General John H. Winder, in charge of Federal prisoners of war, who ordered me to take charge of a prison in Tuscaloosa, Alabama. My health failing me, I applied for a furlough and went to Europe, from whence I returned in February, 1864; I was then ordered to report to the commandant of the military prison at Andersonville, Georgia, who assigned me to the command of the interior of the prison; the duties I had to perform were arduous and unpleasant, and I am satisfied that no man can or will justly blame me for things that happened here, and which were beyond my power to control; I do not think that I ought to be held responsible for the shortness of rations, for the overcrowded state of the prison, which was in itself a prolific source of the fearful mortality, for the inadequate supplies of clothing, want of shelter, etc., etc.; still I now bear the odium, and men who were prisoners there seem disposed to wreak their vengeance upon me for what they have suffered, who was only the medium, or I may better say, the tool, in the hands of my superiors. This is my condition, I am a man with a family; I lost all my property when the Federal army besieged Vicksburg; I have no money at present to go any place, and even if I had I know of no place where I could go; my life is in danger, and I must respectfully ask of you help and relief. If you will be so generous as to give me some sort of a safe conduct, or what I should greatly prefer, a guard to protect myself and family against violence, I shall be thankful to you, and you may rest assured that your protection will not be given to one who is unworthy of it. My intention is to return with my family to Europe as soon as I can make arrangements. In the meantime, I have the honor, General, to remain, very respectfully, your obedient servant,

H. Wirz, Captain C. S. A.

Major-General J. H. Wilson, United States Army Commanding
Macon, Georgia.

Captain H. E. Noyes. Am captain and adjutant to General Wilson; an officer was sent for to Andersonville, and brought this paper to General Wilson.

Cross-examined. I arrested the prisoner and took him to Macon. He was at no time under parole.

Col. G. C. Gibbs. Was in the Confederate Army; resided at Andersonville and was on duty there as the commandant of the post of Camp Sumter; was assigned to duty in October, 1864, by General John H. Winder; Wirz was in command of the prison when I went there; in my absence sometimes Wirz commanded the post. Visited the prison about the middle of August; saw that prisoners were very much crowded; could see the interior of the stockade. Never saw so many men together in the same space in my life; it was more like an ant-hill than anything else; the surgeons of the prison hospital received their orders from Captain Wirz. The only instance of punishment I witnessed was a man who failed to report the escape of a prisoner; the man was put in the stocks a little while, until the surgeon interfered. A dead line was established; do not know if Wirz had anything to do with its construction; its object was to keep prisoners from approaching the stockade; believe the regulation was that any one crossing the dead line was to be shot. The stockade was built of hewed timber, projecting from the ground ten or eleven feet, and inclosed sixteen or seventeen acres of land; a stream ran near the center of it; the stockade was surrounded by several batteries; there were guns on only two of

the four sides; it was built as well for the security of prisoners as to defend the place; there were twelve-pounder howitzers and six-pounder guns, and perhaps some rattle pieces. Visited the prison very often; the prisoners at the time were comparatively few, about 6000; they were bad off for clothing and shelter. Wirz told me that 12,000 prisoners had died there some time in the spring. Wirz was in command about a year; 33,000 prisoners subsequently were confined there. General J. H. Winder and Wirz were both at Andersonville together; shortly after I went there Winder left. Knew Richard B. Winder, who was a quartermaster at Andersonville; Captain Lawson, who was captain and quartermaster; knew Joseph White; was a surgeon at Andersonville; W. S. Winder was a captain, and his father's assistant adjutant; was also on duty at Andersonville. R. R. Stevenson, after White left, was the surgeon at that place; he was there till the senior surgeon came in; the two Captain Winders located the Andersonville prison about the commencement of December, 1863. Dogs were kept at the prison, intended for the tracking of escaped prisoners; they were mustered in the same way as horses; a man named Dunn had them in charge; do not know what has become of him; saw the instruments called the stocks; prisoner never told me the use of them; he told me of the ball and chain. Had heard prisoner speak of the chain gang, and that there had been such an one.

Cross-examined. I went to Andersonville in October last,

and remained there until April; Wirz was there all that time, excepting one or two days. I was Wirz's superior in rank. In many respects Wirz was under my command, but so far as the prison was concerned he was not; there was food enough to feed all; the rations served to the troops and the prisoners were equal; can not tell exactly what the ration was; it included meat, corn meal, peas (you call them beans), molasses and flour; the requisition was made daily; did not know of any change in the rations; if the quality of the ration was unsound a board of survey could have been summoned to condemn it.

The dead line was established previous to my going to Andersonville; do not know of Captain Wirz shooting any one at the dead line, nor of Wirz giving an order to execute any one; the dogs were the ordinary farm or plantation dogs, not blood-hounds; not more than six or seven of them; they were part of the prison discipline; Turner had charge of them, acting under the orders of Wirz. Never knew of Wirz using them himself. Turner was a detailed soldier. The dogs were little, middle-sized and big; do not know whether they were ferocious.

Dr. John C. Bates. Have resided several years in Georgia; a practitioner of medicine since 1860; was a contract surgeon at Andersonville prison from September, 1864, to March. I reported to Dr. R. R. Stevenson in the hospital; saw men lying partially naked, dirty and lousy in the sand; others were crowded together in small tents. I felt disposed to do my duty and aid

all the sufferers I could; they frequently asked me for a teaspoonful of salt, or for orders for a little sifting that came out of meal, as they wanted to make some bread. The men would gather around me and ask for a bone. Clothing we had none; the living were supplied with the clothing of those who had died. Of vermin and lice there was a prolific crop. On returning from the hospital I examined myself; it was impossible for a surgeon to leave there without bringing some with him. Found the men destitute of clothing and bedding, partly naked, sick and diseased; their disposition only was to get something to eat; they asked me for orders for potatoes, biscuits and other things. Sat down and made a report on the condition of things I found at the hospital; for some of the things I said I received a written reprimand signed by Dr. Dillard for Dr. R. R. Stevenson. Medicines being scarce, I drew on indigenous remedies and gathered up quantities of the best anti-scorbutics. Think the reports were not heeded. My attention was called to a patient who was only sixteen years; he would ask me to bring him a potato, bread or biscuit, which I did; put them into my pocket. He had the scurvy and gangrene; advised him not to cook the potato, but to eat it raw; he became more and more emaciated, his sores gangrened, and for want of food and from lice he died. Understood that it was against the orders to take anything in to the prisoners, hence was shy in slipping food into my pockets. Others in the wards came to their death from the

same causes. When I went there were 2500 sick; 20,000 or 25,000 prisoners were crowded together; some had made holes and burrows in the earth; those under the sheds were doing comparatively well; saw but little shelter excepting what ingenuity had devised; found them suffering with scurvy, dropsy, diarrhoea, gangrene, pneumonia and other diseases; when prisoners died they were laid in wagons head foremost to be carried off; don't know how they were buried; the effluvia from the hospital was very offensive; if by accident my hands were abraded would not go into the hospital without putting a plaster over the affected part; if persons whose systems were reduced by inanition should perchance stump a toe or scratch the hand, the next report to me was gangrene, so potent was the regular hospital gangrene. The prisoners were confined in the stockade, like ants and bees; 50 or 75 per cent of those who died might have been saved. The effect of the treatment of prisoners was morally injurious. There was much stealing among them. All lived each for himself. Found persons lying dead sometimes among the living; thinking they merely slept, I went to wake them up, but found they had taken their everlasting sleep.

Aug. 25.

Dr. John C. Bates. Scurvy was next to rottenness; some patients could not eat because there was no mastication; their teeth were loose; they frequently asked me to give them some-

thing to eat which would not cause pain; while Dr. Stevenson was medical director, he did not manifest much interest in the relief of their necessities; the rations were less than 2 ounces in 24 hours. Think a man would starve to death on it. Sometimes the meat was good, and sometimes it was bad; in consequence of the paucity and unwholesomeness of the rations some of the men starved to death; the amputation and reamputation, owing to gangrenous wounds, were numerous. There was plenty of wood in the neighborhood. It was my duty as officer of the day to supervise the cooking; when rations were to be issued would frequently go to the place; sometimes twenty or a hundred would surround me imploring for bones; was represented in a sketch made by a prisoner as distributing bones; that was of frequent occurrence; the sketch was accurate as far as it went. The men sketched hobbled along on crutches; others crawled on the ground with tin cups in their mouths, because they could carry these articles in no other way; they wanted to mash up the bones to procure their contents for food. I made several reports as to conditions, but none of them were heeded. Several of the surgeons met and drew up petitions to have things remedied, but nothing came of them when we sent them. The document handed to me I recognize as signed by Dr. Pelot, who was a medical officer at the prison. I know his handwriting.

The paper was read as follows:

First Division, C. S. M. P. Hospital, Sept. 5, 1864.

Sir:—As officer of the day for the past twenty-four hours I have inspected the hospital, and found it in as good condition as the

nature of the circumstances will allow. A majority of the bunks are still unsupplied with bedding, while in a portion of the division the tents are entirely destitute of either bunks, bedding or straw, the patients being compelled to lie upon the bare ground. I would earnestly call your attention to the article of diet; the corn bread received from the bakers, being made up without sifting, is wholly unfit for the use of the sick, and often, as in the last twenty-four hours, upon examination, the inner portion is found to be perfectly raw. The meat (beef) received by the patients does not amount to over two ounces a day, and for the last three or four days no flour has been issued. The corn bread cannot be eaten by many, for to do so would be to increase the diseases of the bowels, from which a large majority are suffering, and it is therefore thrown away. All their rations received by way of sustenance is two ounces of boiled beef and half a pint of rice soup per day. Under these circumstances all the skill that can be brought to bear upon their cases by the medical officer will avail nothing.

Another point to which I feel it my duty to call your attention is the deficiency of medicines. We have but little more than indigenous barks and roots with which to treat the numerous forms of disease to which our attention is daily called. For the treatment of wounds, ulcers, etc., we have literally nothing except water. Our wards, some of them, are filled with gangrene, and we are compelled to fold our arms and look quietly upon its ravages, not even having stimulants to support the system under its depressing influence—this article being so limited in supply that it can only be issued for cases under the knife. I would respectfully call your earnest attention to the above facts, in the hope that something may be done to alleviate the sufferings of the sick. I am, sir, very respectfully, your obedient servant,

(Signed) J. Crews Pelot, Ass't Surgeon.

To Surgeon E. D. Elland, in charge First Division C. S. M. P. Hospital.

Dr. Bates, cross-examined. Am a resident of Georgia; was there when the war broke out; up to June, 1864, remained at home as a practicing physician, thus being exempted from service in the Confederate army; had had no sympathy or wish to go into it; did not vote or do anything else to bring on the war; accounted myself a Union man. Took an oath to the Confederacy under duress; did not consider it now binding.

Requisitions were made on Dr. Clayton for hospital sup-

plies, and not on Captain Wirz; never heard any blame attached to prisoner about the badness of rations. Captain Wirz had always treated me kindly; never saw him use any harsh means on anybody. The Confederate soldiers had several wells on the outside of the prison; do not think they were supplied with water from the same source that the Union prisoners were, the latter drawing their supplies from the stream running through the prison; the stream itself was not unhealthy, but the lower part

of it might have been from the drainage of the camps. Andersonville was merely a railroad station until the war commenced, when military shanties were put up. Knew of no persons who by their conduct conspired to murder or otherwise cause the death of Union prisoners. Had always objected to the insufficiency and character of the rations. The shortness of the allowance was owing to its having been furnished by the Southern Confederacy; further supplies could not be furnished except by going to the country, and none of the officers had the right to go foraging. The surgeons always did the best they could, and frequently complained to the surgeon-general about the insufficiency of means furnished. Supplies were received from the North from the Sanitary Commission; saw some of the prisoners wearing the clothing which had been furnished.

Dr. A. W. Barrows. Was physician in 27th Mass.; was taken prisoner and sent to Andersonville; was paroled by Captain Wirz and placed in charge of two wards of the hospital; remained there six months, till 9th of October, when I escaped. When I went to Andersonville there were 700 patients lying on the ground, partially naked; some had broken limbs and gangrene, scurvy and chronic diarrhoea; others had insufficient shelter; Captain Wirz would say when any prisoner escaped or attempted to escape that he would starve every Yankee for such attempt; prisoners were punished either in the stocks or the chain gang; men thus fastened could some of them stand

on their feet, while others merely touched the ground with their toes; they were handcuffed and chains passed around their necks and legs, and to those chains a thirty-two pound ball was fastened; the gang would be held together one or two weeks, the men meantime being exposed to the sun and rain; have no doubt that some died in consequence; another punishment was putting the feet in stocks, the feet being elevated, and the other part of the body on the ground. Never got from Dr. White what he asked for, there being some evasive answers; antiscorbutics were much needed but not supplied. They refused to allow me to take men and cut timber, which could have been procured ten rods distant. Hounds were kept near the hospital to get the trail of escaping prisoners, who, when caught, were brought and put in the stocks. A man was mangled in the face by one of the dogs, but recovered. In September, 1864, a Union prisoner was wounded by one of the hounds; he died indirectly from the bite, but directly from gangrene. Have seen Captain Wirz on horseback with hounds, but Turner seemed to have direct charge of them. Heard Wirz order Sergeant Smith to start the hounds, as somebody had got away. Sores as large as my hand resulted from vaccination; the matter used was poisonous, and many deaths and amputations resulted. The ration when I went there was small—two ounces of bacon, a small potato, corn bread two and a half inches square, no coffee, tea, sugar and flour; sometimes there was a little rice soup, a gallon of rice in

thirty gallons of water; in July they got a few vegetables, not a spoonful a day. The morals of the prisoners were corrupted by the treatment; men would steal from each other something to eat, and would work among the filth even for potato parings or anything else; a Union man in my ward was shot within the hospital by a Confederate soldier and wounded in the thigh; the limb was amputated, and the man died next day; when a raid was expected from General Kilpatrick heard Captain Wirz give an order to fire upon the prisoners if they huddled together. There were nearly 36,000 prisoners there in the month of August; nearly three thousand died; on removing of the prisoners from Andersonville one of them fell back, when I saw Wirz knock the man down and stamp upon him. Wirz had a revolver in his hand, but do not know that Wirz used it to knock him down.

August 26.

Dr. Barrows. Prisoners were arrested for buying green corn, which the guard took away from them. Corn is an antiscorbutic and a useful diet. The slops from the cook-house were thrown into the stream which ran through the prison, the exhalations from which were horrible and very unhealthy. The sinks overflowed, owing to the rains, rendering the premises still more intolerable. Human bodies sometimes lay unburied for days. The stench was terrible, sensibly affecting the atmosphere, and was worse than from any dissecting room. Complaints of these things were frequently made to headquarters; dead men were in the

morning frequently found among the living. The largest number of the deaths in the stockade for one day, in August, 1864, was 207. Found Captain Wirz in charge of the prison when I went there, and left him there at the time I escaped. Rations were cut off from the entire number of the 30,000 prisoners for an entire day, owing to alleged offenses of a few. Wirz said to me he (Wirz) was of more service to the Confederate Government than any rebels in front.

Cross-examined. Had never seen our men in the army wearing a ball and chain, nor seen them punished in any other way than by detention in the guard-house; have seen men in our hospitals affected with syphilis, and none of the cases so bad as those at Andersonville.

To the Court. The rebel force at Andersonville was between 3000 and 5000 men; the fuel for them was cut by a large force of colored men; there were axes enough to supply our men for a like purpose. If there had been proper food, clothing; quarters and other necessary supplies, from 75 to 80 per cent of the deaths might have been prevented. In the dispensary have seen supplies and clothing which had come from the Northern Relief Association by the way of Richmond, such as dried beef, say two or three hundred pounds, and some Bologna sausages; saw several boxes at the depot; nobody in my ward got any of the clothing; once or twice a little dried beef was brought in, but it did not afford each man in the ward half an ounce. Do not know who used the remainder of the beef and sausage. If a pris-

oner got to where people were selling peaches or fruit to Confederate soldiers he was not allowed to buy any. As to shooting prisoners, one evening a man was cold and went towards the fire near the fence; a soldier pointed his gun through the fence and shot him.

Robert H. Kellogg. Was captured and taken prisoner to Andersonville on 3d May, 1864; the only other prisoners there at the time were those who had been brought from Belle Isle and Libby Prison, and other points; they were ragged and destitute of clothing; many were nearly naked and totally unprovided with shelter, except tattered blankets; the men were mere skeletons; the prison was crowded, though thousands were brought there afterward. The men were in a filthy condition; there was very little soap; the men would get smoked over the pine fire while cooking, and for want of soap could not remove the stain. The nights were cool when I first went there, but as the season advanced the weather became intensely hot; the prisoners were not supplied suffi-

ciently with fuel; sometimes a squad would be allowed to go out and bring in pine roots to make a fire; sometimes the rations were raw, with no wood to cook them; the penalty of trespassing on the dead line was death; remember seeing a man shot for this cause by the sentinel; if any one crossed from the prison to the swamp he would be shot at. I once stepped to the brook to wash my hands, when the sentinel fired at me; the piece missed and I got out of the reach of danger.

Some days we got nothing at all; some days short allowance, and on others the full quantity; 32 of the 90 men to which I was attached were unable to stand when ordered to fall in line; this was from scurvy and diarrhoea; their limbs were contracted, and they could not keep their feet. The brook running through the prison was exceedingly filthy; the surface was covered with grease; I often went into it barefooted; nearly 300 out of 400 who accompanied me to Andersonville died a few days after they were paroled; the Twenty-fourth New York Battery were nearly annihilated at this prison.

August 28.

Today *Mr. Baker* with his associate, *Schade*, withdrew.¹⁸

Robert H. Kellogg, cross-examined. Unless men sent out to cut wood were strongly guarded they would overpower the guard and attempt to escape; do not

know that Captain Wirz prevented men from going out to cut wood; men dug one well with whatever they could get—such as half canteens, and

¹⁸ *Wirz* was very much hurt at this, and imploringly said to *Mr. Baker*: "You might stay to help me, and you should not mind even if the Court does sometimes overrule you." In the absence of other counsel it now devolved on Judge-Advocate Chipman to see that he has fair play.

tin plates and spoons. The water of the wells was fair; there was not room enough to dig all the wells which were needed, the space was required for the prisoners; never saw Captain Wirz order or take away from the prisoners anything which contributed to their health and comfort; think the police regulations might have been better. Once Captain Wirz did me a kindness. I had been in the woods and had left my knife there, and Capt. Wirz was the means of my recovering it; did not myself know of any wilful or inhuman act by Capt. Wirz.

Thomas C. Alcock. Was captured and sent to Andersonville December, 1864; was searched by Capt. Wirz, who took from me my belt, containing \$150 in gold, \$280 in greenbacks, a jack knife, a breastpin, and gold ring, and pocketbook, these were never returned to me. Once a weak man asked Capt. Wirz to let him go out for some fresh air; Wirz asked what he meant, and turned round, said, any air is good enough for a d—d Yankee; pulled a revolver out of his pocket and shot him down; the man died two hours afterward; spoke in condemnation of this act to Wirz, who said he would put me in the same place; replied I was not afraid of it; Wirz then called a corporal, who put upon me a ball and chain; gradually, by working at the ball and chain, freed myself of the weight, and then made my escape; the man that was shot was named Wright, and belonged to the Eighth Missouri. The prisoners would sometimes get water from the stream or brook by attaching their vessels to the end of poles; while

doing so they were often pushed over the line and the guard would shoot them down.

Cross-examined. My regiment was the 72nd Ohio; found the gold at the root of a tree in the woods; a negro showed me where the money was; did not know to whom it belonged. The man killed by Captain Wirz saluted him, and asked that he might go out of the crowd to get some fresh air; Capt. Wirz asked abruptly what he meant; the man murmured, when Wirz said, in the Dutch language, Look out! the man was only a few paces from Wirz, face to face, when he drew his pistol and shot the man, who died soon afterward from the effects of the wound; I escaped from the prison two months after the man was shot.

Sergeant Boston Corbett. Was captured at Centreville, Va., and conveyed to Andersonville in July. Was exceedingly thirsty, and asked a man near Capt. Wirz for a drink of water; the man was one of our own prisoners on parole; he could not give me water. Another man sick in the stockade asked the Lieutenant if he could be sent to the hospital; the officer said nothing could be done; that he must go into the stockade with the others. After I entered the stockade found 9 men of my company, who had been brought there 3 months previous, within two months six died; of 14 who were taken to Andersonville when I was, only two returned alive I was one of them. I noticed several men near the headquarters in chains with balls, exposed to the heat of the sun; I still bear the marks of the sun by exposure; saw the dead line was a slight

wooden structure three or four feet high, 15 feet from the stockade; have seen men shot and killed there. The prison was in a horrible condition of filth; the swamp on each side of the stream was so offensive, and the stench so great, that I wondered every man there did not die; believe it was the cause of the death of many of our men; the maggots were a foot deep; soldiers dug up roots; they were dried in the sun and used for fuel. The sick lingered around the swamp as soldiers lie down to rest after a march; going to that locality I would find dead men; the feet of others were swollen; gangrenous sores were without bandages; the sores were filled with maggots and flies; the men were unable to move, lying in their filth; they generally chose that position, and would prefer being near the sink. A man died from lice, which were as thick as the man's garments. The food was insufficient, even when double rations were served for calling the roll or attending the sick. When I was sick, no medicine was given to me, they gave me sour meat and water, and called it vinegar; our own men made a better article, which they called sour beer; sick men were carried out at the south gate, in some cases men would die while waiting to be carried out. In moving the dead, four men were assigned, and in return they were allowed to bring in wood, which they could sell inside for a dollar; the men became so hardened that they would say, That's right, sell off a dead man for wood! The water passing through the camp was filthy; had seen onions sold for 50 and 75 cents each. The effect of this

treatment was to demoralize the men; some became idiotic; some men would go over the dead line where it was broken without knowing it, and had they not been warned would have been shot. Hounds were kept there to hunt and recapture those who attempted to escape. Prisoners were allowed to go out in certain numbers to collect wood; I told my comrades that the first time I got out of the stockade I would try and escape; I made the attempt and was hunted, but not immediately found; I lay concealed an hour or two, and heard the yelping of hounds so close as to rub my nose; then made a circle around me until the hunters came up; the soldier said I must go with him; said the old captain told him to make the dogs tear me, but having once been a prisoner himself, he felt for those who were in that condition; when I was brought before Capt. Wirz, he asked the soldier why he did not make the dogs tear me—when he replied, I guess the dogs hurt him enough; Wirz then ordered me back to the stockade.

Scurvy was the general disease; some of the men would be obliged to crawl, and others to walk on crutches. The men being fed on insufficient food and sorghum and molasses, they took sick and died in front of the building; the number was large; they died in cords. I mean that if they had been piled up like wood, they would have made several cords.

Cross-examined. Have seen maggots in the food, and have washed them off in the stream; maggots, too, were in sores, in such a way not fit to describe;

the swamp was filled with mag-gots, occasioned by filth of the men who could not reach the sink. One night, while the men were being removed to another prison, one of them fell down; the witness heard Capt. Wirz swearing, and beating some one.

Samuel D. Brown. Was taken to Andersonville about 15th May, 1864; saw a cripple with one leg, who asked the sentinel to call Capt. Wirz; the captain came; the man asked him to let him go out; the captain never answered, but turned to the sentinel and said, Shoot the one-legged Yankee devil! the shot was fired, and a part of the man's head was blown off, and he died in a few minutes. The bloodhounds were taken round every morning, Capt. Wirz riding with them on horseback, in company with the keeper; saw a man who had been lacerated by these dogs. When I went to Andersonville my watch and \$175

were taken; for one day the prisoners were deprived of food, until they had arrested about 300 men, who from starvation had made a raid on the supply wagons.

Jacob B. Brown. Am brother of former witness, and late a prisoner at Andersonville; on 27th July, 1864, saw Wirz in the sentry box; when a man came beyond the dead line to get water, Wirz ordered that he be shot down—the sentinel fired and killed him, the bullet taking effect in the head. In another case, the ball which was fired took effect in the man's breast; did not see the man die; had no doubt the wound was fatal; heard men threatened by Capt. Wirz; he said if the men did not fall into the ranks they would be shot down; the men accordingly hurried into the ranks; the prisoners were deprived of rations from the 1st to 4th July, 1864.

August 29.

Judge Advocate *Chipman* said he had the following communication from the prisoner:

"Old Capitol Prison, Washington City, D. C., Aug. 29.—Col. N. P. Chipman, Judge Advocate Military Commission: I most respectfully ask the Commission, as I am here alone, to send for my counsel, Messrs. Schade and Baker, as I understand that, on my most fervent entreaties, they have consented again to appear for me. They understand my whole case, and know my witnesses and papers. Hoping that the Commission will grant my request, I sign myself, most respectfully, your obedient servant,

H. Wirz,

Late Captain, A. A. G., C. S. A.

MAJOR GENERAL WALLACE. If there is no objection the gentlemen will be sent for.

The Court was cleared for three-quarters of an hour, and when the doors were opened Messrs. *Baker* and *Schade* again appeared in Court as counsel for Wirz.

Dr. G. G. Roy. Was an army surgeon in the rebel army on duty at Andersonville, under the charge of Dr. Stevenson; the hospital was in a deplorable condition; not sufficient supply of tents and bunks; no comforts; there were between 30,000 and 35,000 prisoners there; did not find difficulty in obtaining medicines, excepting a few rarer articles; the men presented the most horrible specimens of humanity I ever saw; a large number of them were affected with the worst forms of scurvy; attributed the sickness to long confinement, exposure and the absence of comforts; there were maggots in the swamp, the malaria from which had a most fatal effect upon the patients; the insects, or white ants with wings, were such as result from decayed animal and vegetable matter; they were so numerous that it was dangerous for a man to open his mouth at sundown; heard there was a dead line, and one of my patients had been killed, but did not see him shot; all the surgeons came to the conclusion that Capt. Wirz had full authority over the prison, under General Winder; had seen the chief clerk of Dr. James bucked, and on inquiring the reason, was informed that the punishment was inflicted by order of Capt. Wirz.

Cross-examined. The hospital fund, with which delicacies for the sick were purchased, was in existence at Andersonville when I went there; was at Andersonville six months, and the bucking was the only instances of cruelty I saw. The medical condition of the hospital was better after Dr. Clayton came.

Dr. B. A. Vanderkieft. Was on duty at Annapolis from May, 1863, to May, 1865; attended to more than 2,000 of the returned prisoners from Andersonville; they were suffering from chronic diarrhoea, scurvy and other diseases; some were in a dying condition; others had to be treated in the hospital before they had strength enough to be taken home; the disease from which death ensued most was chronic diarrhoea, resulting from insufficient and improper food and exposure; very little attention was paid to their condition at Andersonville.

Martin E. Hogan. Was a prisoner at Andersonville; the men were in a miserable condition, as bad as possibly could be; so thick they could scarcely elbow their way; some lay in their own filth, calling for water and crying for food; no attention was paid them.

The food was half-baked cornbread, which was sour; beef of an inferior quality; men afflicted with scurvy would crawl upon the ground; the sight was horrible; very many were insufficiently clad, and having no shelter, burrowed in ground. As to hounds, I was brought back to prison through their agency; have seen Wirz with hounds trying to strike the trail of an escaped prisoner. For attempting to escape from prison in October, 1864, after the most obscene abuse from Capt. Wirz, I was fastened by neck and feet and remained there 68 hours.

Heard Capt. Wirz give orders that I should not have food, but did obtain food from paroled comrades who stole it for me; saw three comrades put in the

stocks at the same time; one man was put in the stocks because he resented the abuse of a Confederate soldier; saw Capt. Wirz take a man by the collar because he would not walk faster; the man was so worn by disease that he could not; throwing the man on his back he stamped upon him with his feet; saw the man bleeding and he died a short time afterward; in the dissecting room saw students, in pursuit of knowledge; saw open the skulls of deceased prisoners, and opening the bodies.

Cross-examined. When I escaped I took a knife to protect myself from harm; it was a Confederate surgeon's knife; my companions were provided with revolvers; five loads were fired by the party who first pursued, and who were sending the dogs after us. I was put in the stocks because I had tried to escape.

Joseph D. Keyser. Was captured and sent to Andersonville; soon men began to be afflicted with diarrhoea, dysentery, scurvy and gangrene; they lay on the ground and were not protected from the weather; in May, 1864, supplies were received from the North, and some mouldy cake or bread was thrown over the dead line; one man reached beyond the line for a piece of the bread, when the guard shot him through the head; saw another man after he had been shot in the abdomen; had seen men in the chain gang with iron collars around their necks; some of them were thus punished for attempting to escape; prisoner was profane and overbearing towards our men on the slightest provocation; saw men bucked by Capt. Wirz's orders; saw General

Winder at the prison when a number of the prisoners rushed up to see him; Winder told the guard to fire on those who approached the gate nearer than fifteen feet.

Cross-examined. Never saw Capt. Wirz commit an assault on any individual prisoner, but heard him give orders to the guard, one of them to confine a prisoner in the stocks for attempting to escape. Wirz called him a ———. The man spoke back, when Wirz drew a revolver and told him he would fix him. The man was sent to the stocks, where he remained twelve hours.

Alexander W. Persons. Was Lieutenant Colonel of the 55th Georgia on duty in Andersonville from February to June, 1864, and afterward was assigned as post commander; Capt. Wirz came direct from Richmond by order of General Winder to command the prison; the latter, in his order, said Capt. Wirz was an old prison officer, reliable, and therefore capable of conducting the prison; as commander of the post I made requisition for soldiers to guard the prison; these soldiers passed under the control of Capt. Wirz; I undertook to erect additional shelter, but was relieved, and never went back; the timber had been cut down from within the prison; had command at Andersonville in the earlier and better days; drew a bill of injunction to abate the prison nuisance, owing to the stench and effluvia, and unhealthy influence; the judge said he would appoint a day to hear the argument in chambers, and I made preparations accordingly; General Howell Cobb, who commanded the Department of Geor-

gia, sent me a communication, asking him whether the bill was to be charged to me or against the Government; informed him I had drawn the bill, which was to be charged to myself; Cobb replied, that he thought it inconsistent with my duty as a Confederate officer to take such legal proceedings; discovering that I would be court-martialed if I persevered, I said to General Cobb, If you deem it unofficer-like, I will abandon the case; this was August, 1864.

Cross-examined. The capacity of the prison was for 10,000 men, and beyond that number no more ought to have been placed on the ground, even after the enlargement; Capt. Wirz was not to blame for the size of the prison; one of the reasons for desiring to abate the prison as a nuisance, was the almost insufferable stench and filth, caused in part by the graveyards; the green flies were as thick as locusts; the great blunder was on the part of the Confederate Government in sending so many prisoners there without preparation.

Think some of the high officials were responsible; sent a communication to General Winder, saying the prison was worked beyond its capacity; no attention was paid to it.

There were not more than 800 troops when I was there, and the greatest number of prisoners from 18,000 to 20,000.

To *Judge Advocate Chipman.* The dead line originated after Capt. Wirz took command of the prison.

Benjamin F. Clark. Was employed in the Confederate medical purveyor's office as to sup-

plies of medicines; we had to resort to indigenous preparations, while chemicals were obtained by blockade running or importations.

James Van Valkenburg. Reside near Macon; the crops were more than an average in 1864; Macon is 65 miles from Andersonville, and Americus nine miles from there; the provisions were more plentiful than in previous years, because no cotton was planted.

Dr. Castlen. Was 6 months in the Confederate service at Andersonville; saw Captain Wirz seize a man who had fallen out of the ranks, and strike him once or twice; saw a man bitten by dogs; the man was in a tree; he was ordered to come down, when the dogs seized him; Capt. Wirz was there at the time.

Cross-examined. Do not know that Capt. Wirz was to blame for the awful condition of the prison; do not know that Capt. Wirz waded up to his knees in water to keep the dogs from biting the man; did not see the prisoner seize the dogs; the dogs were common foxhounds.

Andrew S. Spring. Was a prisoner at Andersonville; saw the filthy condition of the place and the bad quality of the food, some of which was full of maggots; vegetables were not issued with the rations; succeeded in smuggling some in which I procured from a Georgia regiment; there was plenty of green corn in the neighborhood; a strict order against trading was issued by Capt. Wirz; peaches were plentiful; the guard would seize peaches and vegetables which had been smuggled in, and take them to Capt. Wirz's headquarters; the

effect of the treatment made idiots of some of the men and crippled others; one of the prisoners asked Capt. Wirz to give him employment outside, that he might draw an additional ration; Capt. Wirz replied: You G—d — Yankee son of a b—h, if you don't go in, I'll starve every one of you to death; this was a common mode of reply to prisoners; he said to a prisoner who had endeavored to escape: If you ever do that again, I'll shoot you as sure as I'll go to hell—and I know I shall go there; the 15th May saw a man shot from the sentry box, and Capt. Wirz appeared, and drawing his revolver, swore he would kill every man who did not get away from the gate; another man who was asleep, rolled under the dead line and was shot; saw one of our negro soldiers given 50 lashes for refusing to work, he being sick.

Cross-examined. Never saw Capt. Wirz shoot anybody; do not think that Wirz remonstrated with the sentry for the shooting, and removed him.

Mr. Baker. Did you ever see anybody shot who was not committing an offense against the regulations? Yes, the man who was asleep and rolled over the lines. The men of the 55th Georgia were good men, and friendly to our prisoners, allowing things to be smuggled in. They told me that every sentinel who shot a man received, as a reward, a furlough for thirty days. There are members of that Georgia regiment in court who can verify this assertion. I have been to the storehouse, which was 340 feet long, and found it filled with supplies, two-thirds of which was cornmeal; there were at the time

about 32,000 prisoners, and from 500 to 2,000 Confederate troops there.

September 1.

Nazareth Allen. Was at Andersonville as guard; saw men in the stocks and in the chain-gang; one man died in the stocks, thus punished for trying to escape; once a prisoner stepped out of the ranks to ask Capt. Wirz to transfer him to another mess, when Wirz ordered him back, cursing and threatening to shoot him. As to the filthy condition of the prison, I and others made complaints to our officers; a man who was sick, lying on the ground, calling in his distress on his mother, asked me for tent materials, but I could not give the articles, as it was against orders; prisoners were deprived of vegetables, including onions, which they had purchased at the gate.

Cross-examined. Was conscripted into the Confederate service; never saw any of the prisoners shot, nor did I shoot any of them; never had orders to shoot prisoners who crossed the dead line. The hounds were common plantation dogs, and not particularly ugly or savage.

Captain John F. Heath. Was on duty in Andersonville prison in August, 1864; Wirz sent 13 men to me to be ironed; they were brought by a provost marshal; one of them got away when the hounds were put upon his scent; the man was discovered up a tree, and a pistol was fired at him; Wirz commanded him to come down; the man asked that the dogs might not be permitted to bite him; the dogs, however, attacked him when he descended, biting at his legs; Wirz did not

call the hounds off; recollect of a sick man being put in the chain gang; do not know whether the man died or not. The man had diarrhoea, and those with whom he was chained said they would be damned if they would be fastened to such a man; they had to travel at the same time to the same place for the same purpose; have seen the prisoner knock down two or three persons, before the stockade was extended heard Capt. Wirz say if any more prisoners were sent thither there would not be room enough for them.

William Dilliard. Was in the service of the Confederates at Andersonville; remember the filthy state of the prison, and the miserable condition of the prisoners, owing to the want of the necessaries of life.

Calvin Huneycutt. Was in the rebel service at Andersonville; saw Capt. Wirz draw his pistol and threaten to shoot a man who was sick for not starting up in line; prisoners attempting to escape were hunted by hounds; saw one who was torn in the leg by them; another man was whipped on the bare back with a stick, because he blacked his face and attempted to escape with a gang of negroes.

James Mahan. Was in the Confederate army, and on duty at Andersonville, took 13 men to the blacksmith shop to have iron collars and chains fastened on them; received the order from Capt. Wirz; one of the men called Frenchy made his escape; Capt. Wirz said, when he heard of it, That d—d Frenchy has escaped again, and he sent for the dogs, which got on the trail of the

man, who was captured near the stream; Wirz got off his horse and went alongside of the dogs and fired his pistol at the man; the man's trousers were torn by the dogs; do not know whether the flesh was injured; have heard Wirz remark that he wished all the prisoners were in hell, and himself with them.

Judge Daniel Hall. Reside ten miles from Andersonville; frequently visited the prison in December, 1864; the place was so crowded that there really seemed to be no room for more; law required one-tenth of the farm products to be delivered to the government and paid in as tax; the act was generally complied with; the supplies were gathered at Oglethorpe, ten miles from Andersonville.

Cross - examined. General Winder told me the prison was built for 10,000 only, but the rush of additional prisoners from Libby, Belle Island, and other points nearer Richmond, in consequence of Dahlgren and Kilpatrick's raid, overcrowded the prison. General Winder wanted to enlarge the prison, but could not procure sufficient timber and labor. The General said he had impressed all the saw mills he could, and was unable to furnish all the prisoners with shelter.

September 3.

O. S. Belcher. Was in the 16th Illinois, and a prisoner at Andersonville from March until September, 1864; once Wirz came into the stockade, when a crippled man, walking on crutches asked to go outside; the request was refused, and the cripple said he would rather be shot than stay there; heard Wirz halloo to the sentinel, and told

the man if he did not go back he would shoot him; the man did not return, when the sentinel fired, and shot him in the jaw; the cripple was known by the name of "Chickamauga;" Wirz afterward threatened to shoot the other men if they did not go away.

Again, while the prisoners were being divided into squads, one of the men, owing to sickness did not fall in, Wirz threatened to shoot and did shoot him; the ball went through the man's hat; prisoners were kept in the sun all day and were not allowed to procure water; if the guard could not give a satisfactory account of one of their missing numbers, they were deprived of their rations; there was not sufficient room in the prison, scarcely enough for men to stand upon; there were 42,000 prisoners there at one time; heard Wirz say he was killing more Yankees than those who were serving at the front; had seen 25 or 30 men shot over the dead line, and others fired into who were not over the dead line.

Mr. Baker. Were there not desperadoes there, men who would steal and commit other offenses, and was not the cripple to whom you referred one of them? Don't think that a cripple on a crutch was a good man to steal. You spoke of a man at whom the sentinel fired. Did you see the ball hit him? A man must have very good eyes to see the ball when it strikes a man. Many men were shot; one was shot while in his tent, and for merely stretching his arm over the dead line; another was shot for treading over the line; heard Capt. Wirz order the sentinel to

shoot the cripple; some of those shot at were killed, and others were taken to the hospital.

James H. Davidson. Was of the 4th Iowa; a prisoner at Andersonville; for a week I drove the dead wagon; sometimes 25 men were thrown into it like wood; have seen rebels with blankets, shoes and shirts on, sent thither by the Sanitary Commission for the use of our men; Capt. Wirz made a breakfast on some of the crackers, cheese and dried beef sent there for our prisoners; saw 500 boxes at the depot with supplies; they were marked U. S.; it was a common thing for men to be put in the chain gang; a man died in the chain gang with an iron collar around his neck; saw the hounds; there were two kinds, catch dogs and bull terriers; one of the dogs badly tore the flesh from a man's legs; while another man was hanging up his clothes which he had washed, to dry, one of the pieces blew over the dead line; he stepped beyond the line to get the piece when he was fired upon and shot in the breast; another man reached beyond the dead line for some crumbs of bread when he was shot in the head; Wirz shot Wright a short time after he assumed command of the prison; the latter was sick, lying on the ground, and asked Wirz to let him go out for some purpose when Wirz shot him; Wirz remarked that he was killing more Yankees there than Lee was at Richmond; have seen men starved to death; food was so scarce at one time that some of the men picked up particles of food that had already passed through the system; had never seen Wirz shoot more than one

man. The grave diggers were Union soldiers.

To the Court. The dead were buried about 2½ feet deep; some were buried with and some without clothing; never saw any of the dead stripped before they were buried; men were buried in trenches, 150 bodies in a single trench.

Captain J. H. Wright and Col-

onel Fanning, formerly in the rebel service, testified as to the signatures of General Winder and Captain Wirz to a consolidated return for August last, which was exhibited to them.

Major Hosmer, Associate Judge Advocate (sworn), said he obtained the paper from the chief having custody of rebel papers at the War Department. The paper was as follows:

“Consolidated Return for Confederate States.

“Military Prison, Camp Sumter, Andersonville, Georgia, for the month of August, 1864: Prisoners on hand last of August, 1864, in camp, twenty-nine thousand nine hundred and eighty-five; in hospital, one thousand six hundred and ninety-three; total, thirty-one thousand six hundred and seventy-eight. Received from various places during August, three thousand and seventy-eight; recaptured, four; total, three thousand and eighty-two; making in the aggregate thirty-four thousand seven hundred and sixty. Died during the month of August, two thousand nine hundred and ninety-three; sent to other prisons, twenty-three; exchanged, twenty-one; escaped, thirty; making three thousand and sixty-one, of all of which there are, on the thirty-first of August, in camp, twenty-nine thousand, four hundred and seventy-three; in hospital, two thousand, two hundred and twenty; total, thirty-one thousand six hundred and ninety-three.

“The same complaint has to be made against the carelessness and inefficiency of the guard. Of the thirty prisoners, eleven escaped while on parole of honor not to escape as long as they would be employed to work outside. The balance of the nineteen escaped, some in bribing the sentinels with greenbacks, some simply walking off from the guard while returning from the place where the tools are deposited at night that are used on the stockade in the day time; perhaps twenty-five more escaped during the month, but were taken up by the dogs before the daily return was made out, and for that reason they are not on the list of escaped nor recaptured. That only four were recaptured is owing to the fact that the guard nor the officers of the guard reported a man escaped. The roll call in the morning showed a man missing, but it was too far gone to be tracked. As we have no general court-martial here, all such offenses go unpunished, or nearly so. The worthlessness of the guard force is on the increase day by day.

H. Wirz,

“(Endorsed) John H. Winder,

“Captain Commanding Prison.
Brig.-Gen.”

Thomas Hall. Was a prisoner at Andersonville; had charge of a squad of 90 prisoners; only one out of the entire number survived; men died off rapidly, a good many sunk from exhaustion and starvation, and could not get up. Wirz threatened that if they did not rise he would blow the brains out of the ——— Yankees; Wirz threatened to fire grape and canister into them; have seen a man's leg that had almost been torn off by one of the hounds; men were vaccinated in their arms, and soon thereafter sores appeared twice as large as a silver half dollar, and filled with maggots; heard a sentinel remark, after shooting a man, I'll have a furlough of thirty days for that, and if I thought I could get a furlough for sixty days I would shoot another.

Dr. William Batzer. Was assistant surgeon at Jacksonville; attended a number of cases from Andersonville; condition of the sufferers was horrible; the larger portion of them were mere skeletons; of 3,300 of the released prisoners seen at the place there were not 200 who did not require medical treatment; one half of

those who survive will never be fit to resume their former occupations; some of those affected with the scurvy were idiotic; bones had to be removed from the jaws and other parts of the body of the sufferers.

James Clancy, a prisoner at Andersonville, testified to the shooting of men for crossing the dead line.

Oliver B. Fairbanks. Am of the 9th New York; was a prisoner at Libby, and afterwards at Andersonville; the treatment at Libby was better in every respect than at Andersonville; Capt. Wirz generally saluted the men with, You ——— Yankee sons of bitches; my step-father was in the prison affected with scurvy; was lying on the ground; could not straighten his arms; Wirz, approaching him, said, You ——— Yankee son of a bitch, I won't give you anything to eat, and stopped his rations for twenty-four hours, Wirz kicked him, causing him great pain; my father died in prison about a month after the occurrence; he made a statement to me before he died; I placed his hand on a paper and wrote this:

"Camp Sumter, Andersonville, Georgia, August 27, 1864. Oliver: I die from sheer starvation, and don't for the world tell your mother of the awful condition which I am compelled to die in.

(Signed) Richard Fairclough."

I refused to be vaccinated, when Capt. Wirz cursed me and put me in the chain-gang; in order to be released I consented to be vaccinated; when it was performed I washed the matter out with soap and water, and escaped poisoning; told others what I had done, and they washed

out the poison the same way.

September 5. /

J. Nelson Clarke. Was taken a prisoner to Andersonville about 28th May, 1864; confirm the evidence as to the crowded and filthy condition of the stockade, the sufferings of the pris-

oners, the coarse, dirty and insufficient amount of rations, etc. In August, last year, I counted 184 dead men in the stockade; an insane soldier wandered up and down by the stream, refusing to wear clothes, and who had not sense enough to know that he must cook his rations, ended his life by suicide. Another prisoner destroyed himself by hanging, having previously declared that he would rather die than remain in the stockade; of 41 men in my company taken to Andersonville, 22 died; saw six men shot at different times, two of them I know died; one of them extended his arm too far out over the dead line while dipping water out of the stream, when the sentinel fired; another happened to get slightly beyond the dead line; the sentinel fired, but instead of hitting him struck a man who was lying in a tent. The other four prisoners who were shot crossed the dead line; did not see or hear Capt. Wirz give the order for shooting.

Vincent Halley. Am of the 72nd New York; was a prisoner at Andersonville from March, 1864; heard Wirz give orders to have men put in the chain-gang, and to have irons placed round their feet, and also to the guard to shoot the first man who should cross the dead line; Wirz threatened to shoot any man who would not promptly fall into line; have seen the marks on bodies of men bitten by the dogs, and the pitiable condition of 150 men who were vaccinated with poisonous matter.

Edward P. Kellogg. Was of the 129th New York Cavalry; saw four men shot for crossing the dead line; such shooting was

quite a common occurrence; was bucked for six hours because I had failed to report a man who had escaped; bucking consists in tying the wrists together, and then fastening the arms over the knees.

Cross-examined. Never saw a man bucked in the U. S. army.

Joseph R. Achuff. Was of the Twenty-fourth Ohio; a prisoner at Andersonville; having gone out with a rebel guard, I jumped on the rebel's back, while the two prisoners who accompanied me took away his gun; hearing the dogs in chase, we scattered; ran into a swamp and soon saw five hounds, and seven rebels on horseback; the hounds were not taken off of me for fifteen minutes, during which time I had to fight them with my fists; had nothing upon me but a pair of pantaloons, made of two rebel mail sacks; still carry the marks of the biting on my legs; a horn was blown as a signal to tear the hounds off; was taken before Capt. Wirz, who ordered me to be put into the stocks; was exposed to the sun, though they pretended to give me shade, for thirty-six hours; during that time had only two drinks out of the muddy creek; when I spoke to Wirz about this treatment was told to dry up, or he would have my brains blown out; after being taken out of the stocks, was ironed, the rings passing around my ankles, and the legs separated by an iron bar 18 inches long; my legs were sore and scurvy fell into them; was kept 32 days in irons by order of Capt. Wirz; when a squad of Sherman's men were brought in, they were stripped of everything except pants and shirt, even their

buttons were split open, Wirz saying he had heard of money sometimes being stowed away in buttons; the men were sent into the stockade, and Wirz said they were raiders, and ought to be hung; they belonged to Stone-man's cavalry; Wirz struck a Michigan boy over the head with his revolver, the result of which was that the boy died; saw the man called Chickamauga killed; the men had nicknamed him "muttonhead;" he belonged to Illinois, and was silly, and had lost a leg; the boys having plagued him, he applied to Wirz to go on parole; Wirz cursed him and threatened to blow his brains out; the man was at the time inside of the dead line; Wirz ordered the guard to blow his brains out; the guard fired, the shot striking him in the left side; he was carried out and died.

Saw Wirz lay out the dead line in April, 1864; heard him give orders if any man crossed, to shoot him; on 20th March, 1864, saw Wirz kicking a poor skeleton around there, and cursing him; on the 3rd, 4th and 5th July, rations were cut off throughout the whole stockade, because some one had escaped; the number of prisoners there at the time was 35,000; on the 15th July there was a great crowd at the gate, men trying to get out with the sick; only one could pass out at a time; there were two guards between the dead line and the stockade; Capt. Wirz gave orders if any one stepped over the dead line to blow him through; the guard said he could not keep the crowd from encroaching upon the line; the sentinel at the time had the muz-

zle of his gun at the stomach of a fine-looking Pennsylvanian, when he was ordered to fire, and shot the man dead; whenever a man was wounded and carried to the hospital, he would never come back; George White, of Germantown, Penn., belonging to the marine corps, after being wounded, was carried off to the hospital; subsequently saw White's dead body at the dead-house, where Wirz was in company with two guards; asked him whether I could not take a lock of his hair? No, said Wirz, If you do I'll blow your — brains out; about 150 of our prisoners were down to the creek bathing; a woman on an eminence was seen to nod and wave her handkerchief to a sentinel, who fired and shot one of them in the head; the sentinel for this obtained a furlough for thirty days. I applied to Wirz to have the filthy grease stopped from being thrown into the stream; Wirz replied that the water was good enough for Yankees.

Cross-examined. Never heard or saw a soldier in our own army placed in irons; did not hear Wirz give orders for taking watches and other valuables from our prisoners, but saw him himself searching the men and appropriating their possessions; prisoners were stripped of clothing, jackets, boots and hats in the presence of Capt. Wirz; I had previously been robbed of my pocketbook.

Daniel W. Burrenger. At Andersonville we were during four hours exposed to the burning sun; some of the men were sun-struck; Wirz gave orders that if any stepped out of the line they

should be shot; he also said if any asked for water they should be shot, accompanying the remark with a denunciation of the — Yankees; while men lay fainting, Wirz said if it was in his power he would make the victory complete; saw a man shot early in July for getting water, although he was not over the dead line; another man was shot while lying in his tent; the rations of some sick men were stopped; I shared my rations with them; have seen prisoners searching in the filth which had passed through men for the undigested particles of food, and for scraps from the jailor's camp; have seen vegetables, such as potatoes, onions, peas and also apples, peaches and melons in the vicinity of the camp.

Horatio B. Turrell. Was of the 72nd Ohio; taken to Andersonville on 19th June; Wirz threatened the men, using vile language and calling the men — Yankees; a man who showed Captain Wirz his ration of corn bread, and asked whether better could not be furnished, was met with the response, — you, I'll give you bullets for bread; there was not sufficient accommodation for one-twentieth part of the prisoners. The swamp was more than a foot deep with human excrement, and this spoiled the water in the wells; once I saw 46 corpses in the dead-house; another time 100; the bodies were thrown into the creek like dead hogs, 15 or 20 being a load; when the prisoners went there Wirz came forward and read the rules, saying the prisoners would be shot if they entered the dead line, and that

any one speaking to a guard would be shot by the guard; Wirz said if any of the Yankees traded with the guard, and did not get what they bargained for, and then complained to him, would say, Good for the Yankee, and bully for the guard.

Robert Merton. Was of a Pennsylvania regiment; saw Capt. Wirz wearing shirts sent to our prisoners by the Sanitary Commission; had never seen the stocks empty; saw one man receive 75 lashes for carrying onions into the hospital; saw Wirz kick a sick man; and heard the dying statement of a black man who was shot in the back; a young man was shot by a guard, who said he would shoot another if he could get sixty days furlough; Wirz remarked if he could have his own way, not twenty-four men would get away either by exchange or parole.

Cross-examined. Rations were stopped because some of the men, 25 of them, had been engaged in digging a tunnel; it was dug with tin plates and oyster shells.

Frank Maddox (colored). Was of the 35th U. S.; though wounded in the head and foot, was put to work at the prison; a colored man was whipped with 250 lashes; was stripped naked, and laid upon a log and whipped all over; a man who had blackened his face, and mixed with the colored men, in order to make his escape, was discovered and whipped, Wirz saying as the man blacked himself to be a negro, he would give him the negro's law, namely, 39 lashes; saw twelve men together in the chain-gang for an entire week; had seen a man torn by the

dogs in a shocking manner; the man was nearly dead, and was put in stocks; a couple of days after I buried him; in September, 1864, Wirz, while in the graveyard with other officers, said, We have given the Yankees the land they came to fight for, meaning six feet of ground. Wirz, with some of the doctors who were with him in the graveyard, looking at corpses which had been vaccinated, laughed at the sight exhibited, and the killing of the men; saw boxes sent by the Sanitary Commission, and Wirz had on one of the shirts and pair of pantaloons.

Joseph Adler, testifying as to instances of suffering of the sick similar to those heretofore narrated, mentioned the case of a man who had been assailed by the dogs, whose throat had been torn to pieces, the blood was running from the wounds; Wirz, Drs. White and Stevenson and others, were near the man at the time. Wirz said, Served this — man right; the man died on the spot; some of the prisoners had been digging a tunnel with a view to escape; one of their number betrayed them, saying to Capt. Wirz that he would communicate good news if the captain would give him something to eat; Wirz promised to do so, and came with six others to fill up the tunnel; Wirz carried a loaf of corn bread under his arm to give to the informer; a man almost dead with diarrhoea, seeing Wirz, got up from the ground and said, Please give me something to eat, I have been too sick to go for my food. Wirz had a riding whip in his hand, with which he struck the man over the head; the man

went into fits, and was taken to the hospital; two days after that he died. Had seen men suffering in the stocks; of the 71 men who accompanied me to the prison, all excepting 12 died. A man having crossed the dead-line, Wirz asked the sentinel why he did not shoot, and instructed him to shoot whether the man was over the dead-line or not; he said if the sentinel did not shoot he would have him punished; the sentinel then shot the man, the ball taking effect in the breast; that was of the one-legged man called "Chickamauga."

William H. Jennings. Am a negro soldier. A wound which I received in the thigh was not dressed after I was taken to Andersonville; I was whipped in March, 1864, for not going to work, by order of Captain Wirz; a month after I was imprisoned was not able to work, having caught a heavy cold by working in the swamp. Turner, who had charge of the dogs, gave me 30 lashes on the bare back; was then put in the stocks for a night and a day, with nothing to eat or drink; after being released, was again put in the stockade; could not walk. When in the hospital saw a man who had been shockingly bitten in the head by the dogs, and who died soon after.

Thomas N. Way. Belong to an Ohio regiment. At Andersonville was punished for fifteen minutes by being tied by the thumbs and held up, toes barely touching the ground; attempted to escape and was captured; encountering Wirz, latter said, Well, you're back again; I'm going to take care of you this time; I'll put you in the stocks. I said, in a joke, I'd rather be

carried than walk, when Wirz replied, If you give me any more of your lip I'll shoot you. Wirz put me in the stocks four days longer; my head and feet were fastened in the stocks, back on the ground and face exposed to the sun. Knew personally about the hounds; had been captured by them three or four times; a young fellow named Preddy, 17 years old, was caught by the foot and afterwards torn all to atoms by the dogs.

I and another companion escaping climbed a tree, but were caught and brought back; this was in the latter part of August, 1864; Turner, who was with the hounds, said, Good for you, you — of —; I wish the dogs had torn all of you to pieces. I was bucked.

In September, 1864, while forming line, a sick man could not find his place, and ran up to the head of the line, where he was met by Wirz, with the exclamation: You — Yankee — of a —, if you don't get in the ranks I'll shoot you; he struck the man with his revolver and knocked him down; the man being weak could not get up. I was in ball and chain with four others for 25 days for attempting to escape.

John H. Stearns. Shots were frequently fired into the stockade by the sentinels; saw, in August, men who had received gunshot wounds sent to the hospital; saw the shocking condition of the prisoners who were placed in the hospital, some of whom were almost naked; remember one case where the most offensive filth had got between this man's clothes and his skin, penetrating his nose, mouth and rec-

tum, causing him intense pain; the man was delirious from disease. Amputation was frequently performed, resulting invariably in death; do not remember any cases of recovery where amputation had been performed; the effect of the vaccine was syphilis, some cases as marked in their character as that disease itself.

Alexander Kennell. Was a prisoner at Andersonville. Saw men with ball and chain; had seen them bucked and gagged and in the stocks; a man who belonged to a Pennsylvania regiment, about 15th February, was put in the stocks at four in the afternoon, and was brought back to the stockade at nine; he did not eat anything after he came in, and told me he had been chilled thoroughly; he soon died, in consequence of the exposure; another man died from injuries received in the chain gang.

William Willis Scott. In August, a sick man, sitting on a bank, asked Captain Wirz to be sent to the hospital; he cursed him and struck him a violent blow over the head; the man went into his tent and died a day or two after. In another case one of the guard threw a brickbat and struck Wirz on the shoulder. Wirz, without stopping to make inquiry, drew his revolver and shot a Union man next to him.

L. S. Pond. Am of 2nd N. Y. heavy artillery. Men were robbed of blankets and canteens at Andersonville; saw Wirz take the picture of a lady and two children from a Michigan soldier, and throw the photograph on the ground and tramp it beneath his heel; the soldier's wife

was dead. Another picture was taken from a young man; it was passed around, Wirz making vulgar remarks about it; the young man asked that the picture be returned to him, but Wirz retained it, and pulling out his revolver, threatened to shoot him. (Witness also told of cases of shooting men at the dead-line, of hounds being sent out after prisoners, and of Wirz's cruelty to a sick man.)

Rufus Monday. Am of the 75th Ohio. On 22d February saw Wirz pick up a brickbat and strike a sick man on the ear; on 10th March he kicked a young man who sat down, and whose nose and mouth bled in consequence of the assault.

Abner A. Kellog. Am of the 40th Ohio. When we were at Andersonville we were robbed of blankets, canteens and watches, which were removed to Capt. Wirz's headquarters; they were never returned. A crazy man having been shot, the sentry was asked why he did so; he replied he was acting under orders of Capt. Wirz. The latter, on being asked by a prisoner whether he expected the men to live with such usage and unwholesome food as was shown to him replied, It is good enough for you — Yankees. In August, 1864, saw a sick man at the gate for 24 hours with a sore on him as large as the crown of my hat, filled with maggots, fly-blown; the sergeant asked Capt. Wirz to have the man carried to the hospital; No, said Wirz; let him stay there and die. The man was afterward carried out a corpse.

Sidney Smith. Am of the 14th Connecticut. Saw Wirz knock a man down with his re-

volver; another man, who was sick, received a severe bayonet wound; almost every time a sentry shot a man he was relieved on thirty days furlough.

Grottfeld Brunner. Am of the 14th Connecticut. Prisoners were treated well until Capt. Wirz assumed command. Wirz used to come into the stockade every morning, and if one man was missing, the whole detachment would be deprived of food until he was accounted for. Being sick one day, I was not at morning roll-call; Wirz came into my tent and called me a Yankee — —, drew his revolver and threatened to kill me on the spot; I replied it would be better if Wirz would kill me, whereupon he kicked me out of bed. Some ladies who had assembled at the gate asked our men what they came there to fight for? One of the prisoners made them a speech, at which they became angry; Wirz coming up, said, Get away, you — Yankees; I've got enough powder and ball to kill all of you.

Thomas A. Howe. All blankets, coats, watches, money, etc., were taken away from the prisoners arriving at Andersonville; it was difficult to find a place to lie on, the ground being so thickly covered with prisoners; could not at first sleep, owing to the wounds and groans of the sick; when I woke in the morning saw dead men all around me.

September 7.

Bernard Corrigan. Am of the 2nd Ohio; saw the shooting and killing of five or six Union prisoners in the stockade, during July and August, 1864. One was in the act of washing his clothes, and another was trading

boots with his guard. Wirz struck me for not answering to my name, which was incorrectly called, and then tied my arms and legs together with his own hands, fastening them with a stick; was kept in that position two hours and a half; had seen a man who was badly bitten by the hounds.

Cross-examined. Was present at the hanging of the six raiders by our own men; had nothing to do with the trial of the raiders; the time I was bucked was on 17th May, for failing at roll call to answer to a wrong name.

John W. Case. Am of the 47th New York; on 17th September those who were sick and wounded were told that if they could get to the depot without assistance they might do so; they were to be exchanged; could not readily get into the car with my crutches, when Wirz called me — Yankee, and threatened to blow my brains out. Somebody shot at me previously, but struck another person; I was not near the dead line. The sentinel called out, Halt, Yank, I'm going to shoot; saw four or five shot; one of them was trying to build a fire and the other was taking down the corners of his blanket; the latter was shot in the head; shooting men was a common occurrence every night; frequently heard men crying murder.

Cross-examined. Heard a sentinel say that he received a furlough of thirty days for every Yankee he killed; knew men were shot during the night, because I saw bodies the next morning.

Edward Richardson. Have resided in Albany 23 years,

forty-five miles from Andersonville; was at Andersonville every month in 1864, until August; there was a good corn crop in 1864, but not much wheat; there were many sweet potatoes; in 1864 a large wheat crop was planted, but the rain destroyed it; the plantations in the vicinity of Andersonville were large, and farmers raised vegetables for their own use.

Cross-examined. Saw in the two warehouses at Andersonville considerable bacon, syrup and corn meal; there was not much garden truck in 1864; there was difficulty in obtaining seed.

To the Court. It is a corn-growing country; there was a good crop in 1864, and more corn was planted than in any previous year.

Charles T. Williams. Am of the 1st New Jersey; the medical treatment was better under Dr. Clayton, the post surgeon, than under his predecessors, Drs. White and Stevenson; saw two men shot in the stockade, and one in the hospital; shooting was a common occurrence; Chicamauga was among those killed, and also another cripple, who had approached the guard for the purpose of trading; some of the clothing sent by the Sanitary Commission was distributed to the prisoners in one of the hospital wards, while blankets and pants were appropriated by the rebels.

Cross-examined. Have seen Capt. Wirz interfere with a man in the hospital, but he used no personal violence; a Yankee was not allowed to enter the storehouse at Andersonville, but looking in I saw goods and groceries piled up.

September 8.

The Judge-Advocate read the following letter:

Old Capitol Prison, Washington, D. C., Sept. 8, 1865.

Colonel N. P. Chipman, Judge-Advocate: You will, I hope, excuse my liberty to address you these lines, but not knowing to whom to appeal, I refer the matter to you. I am now a prisoner since the 7th day of May, 1865. I have been deprived of all chances to receive the consolations of religion ever necessary to anybody, and truly more so to a man charged with crimes so heinous, so terrible, that the mere thought of them makes me shudder.

Although I know myself full well that I am wrongfully accused, that an all-seeing, all-knowing God knows my innocence, still I need some encouragement from others not to sink under the heavy burden which is placed upon me. Under these circumstances I most respectfully ask that permission be granted to Rev. Fathers Wheelan and Hamilton to visit me, and administer such spiritual comforts as my unfortunate position requires. They are both men of integrity, and will not profit by the occasion to see or do anything but what their duties as ministers of the Gospel will permit. Hoping that this, my humble request, may be favorably received, and the permission be granted, I remain, Colonel, most respectfully, your obedient servant.

H. Wirz.

Colonel Chipman. The reverend gentlemen mentioned are here as witnesses for the prosecution. They were Roman Catholic chaplains at Andersonville in the summer of 1864. I do not think they would abuse the privilege asked.

The COURT. Certainly we have no objection to the request, but we have no power to grant the permission, as the prisoner is not in our custody.

Colonel Chipman. I will then refer the communication to the War Department for its action thereon.

MAJOR GENERAL THOMAS. If the prisoner is more ill than he was yesterday, it might be a question whether we could not get along better by granting a little respite. It might be desirable to have a day's rest.

Assistant Judge Advocate Hosmer. So far as comfort was concerned the prisoner is as well off here as he would be in prison. If he is not able to sit up he could lie down. If he is not able to lie down, but requires medical attendance all the time, of course the trial cannot go on. This room has more ventilation and is certainly preferable to the prison.

The COURT. It would not be proper to put on the face of the paper an indorsement of the approval of the Court, but there was no doubt the request would be granted.

Lieutenant Prescott Tracy. shoot a man, but heard him give Was a prisoner at Anderson- the order to shoot a man named ville; never saw Capt. Wirz Roberts; not knowing the rules,

he went to drink from the stream; the banks being muddy, he went within six inches of the dead line, when Wirz hallooed to the sentinel and asked why he didn't shoot the ———; the sentinel fired, the ball going into the top of the head and coming out of the back of the neck, the man died; this was in August, 1864; some men died from the effects of being put in the stocks, and from the consequent exposure to the weather; Wirz never gave the prisoners a good word, having asked the prisoner for better rations, the latter replied, he would race the men into hell.

Cross-examined. Never knew of a prayer meeting or the reading of the Bible on Sunday. There was no means of telling one day or one hour from an-

other, all the watches having been taken away.

William Crouse. Am of the 7th Pennsylvania; saw Capt. Wirz knock a man down; knew that a man who had been in the stocks died the day after being relieved; saw the shooting of five men at as many different times; the sentry said shoot the ———.

Colonel Chipman said he now proposed to introduce some documentary evidence to show that the Department at Richmond had knowledge of the condition of the prison at Andersonville in May last.

Captain C. M. Selph. Was in the Confederate States army and four years in the Adjutant General's and Inspector's Department; identify the handwriting of General Howell Cobb in this letter:

Headquarters Georgia Reserves, Macon, Ga., May 5th, 1864.

General S. Cooper, Adjutant General, Richmond, Va.—General: Under your orders to inform myself of the condition of the prison at Andersonville, with a view of furnishing from the reserve corps the necessary guard for its protection and safety, I made a visit there, and have just returned, and now submit the result of my examination. There are now in the prison about twelve thousand prisoners, in an area of less than eighteen acres, with a stockade around it about fifteen feet high. I presume the character of the prison is well understood at Richmond, and therefore give no description of it. The danger of the prisoner's escaping is not so great as I have supposed. With a guard of twelve hundred men, four pieces of artillery, and a cavalry company, all apprehensions of escape would be quieted.

I have arranged to send two regiments of infantry there within the next week, which, with the detached companies of Col. Parson's regiment, will be an ample infantry force. Captain Gamble's battery is very well supplied with horses, and they are not needed at Andersonville, whereas, Captain Tiller's horses have been so reduced that he is unable to move his battery in the field; the exchange of these batteries would be of a decided advantage to the service. I recommend the cavalry company because its presence would have a salutary effect in restraining the prisoners from any attempt to escape knowing the means are at hand to pursue them, and in the

event of the escape of any considerable number, the cavalry would be absolutely necessary to their successful pursuit.

I took the liberty of making several suggestions for rendering the prison more secure, and if the tools could be had, I would recommend that the entire prison grounds should be surrounded by fortifications, which could be put up by the troops, whose health would be promoted by the employment. The most important change is the one suggested in the accompanying report of my chief surgeon, Dr. Eldridge, that is the erection of a hospital building outside of the prison, upon that point there cannot be two opinions among intelligent men. It ought to be done at once, and such is the opinion of every sensible man that has examined the prison. The prison is already too much crowded, and no additional prisoners should be sent there until it can be enlarged. The effect of increasing the number within the present area must be a terrible increase of sickness and death during the summer months.

I understand that an order has been given for enlarging the prison. If it was possible to make another prison it would be much better, for I doubt very much whether the water will be sufficient for the accommodation of the increased number of prisoners. The general management of the prison under Col. Parsons is good, and he manifests a laudable desire to discharge his duties in the most efficient manner. The duties of the inside command are admirably performed by Captain Wirz, whose place it would be difficult to fill. I still think the rank of the commanding officer of the post should be a brigadier-general. In view of the number of troops that will be under his command, it seems to me he should have that superior rank over those who may be ordered to report to him. I take the liberty of inclosing a copy of Dr. Eldridge's report. I am, General, very respectfully,

Howell Cobb,

Major-General Commanding, etc.

Dr. Eldridge's report is dated Macon, Ga., May 6, 1864, and is addressed to Major Lamar Cobb, of the Georgia Reserve Corps. Speaking of his visit to the camp at Andersonville, under instructions from General Cobb, he says he found the prisoners in his opinion, too much crowded for the promotion, or even continuance of the present health, particularly during the approaching summer months. The condition of the Belle Island prisoners, on their arrival, was such as to require more attention to their diet and cleanliness than to the actual administration of medicines, very many of them suffering from chronic diarrhoea, combined with the scorbutic disposition, with extreme emaciation as the consequence. The hospital being within the inclosure, it has been found impracticable to administer such diet, and give them such attention as they require, as unless constantly watched, such diet as is prepared for them is stolen and eaten by the other prisoners. In consequence of the state of affairs generally, he suggests various improvements, and the writer pays a compliment to Dr. White's medical ministrations.

The following paper was also put in evidence:

Camp Sumter, Andersonville, Ga., May 8, 1864—Major: I have the honor to make the following report in regard to the Confederate States military prison at this post. I was assigned to the command of the prison by Col. A. W. Parsons, the commandant of the post, on the 27th of March, 1864, having reported to him for duty by order of General J. H. Winder, commanding Confederate States prisoners. I found the prison in a bad condition, owing to the want of tools, such as axes, spades and lumber, to erect proper buildings. The first commandant of the post, Captain W. S. Winder, and his successor, Colonel A. W. Parsons, had left nothing untried to supply these so important articles.

Only two weeks ago I received axes, spades, etc., from Columbus, Ga., and went to work cutting ditches, etc. I hope to have everything in the interior of the prison completed in two weeks. The bakery, which could not be completed for want of lumber, is now in operation. The necessity of enlarging the stockade is unavoidable. I shall commence as soon as I can gather a sufficient number of negroes. I would most respectfully ask you to present to the authorities at Richmond the impediment thrown in my way by having the hospitals inside the prison.

The number of prisoners on the first day of April was seven thousand one hundred and sixty. I received up to today from various points, five thousand seven hundred and eighty-seven; recaptured, seven. Total, twelve thousand nine hundred and fifty-four. The number of dead from the 1st of April to 8th of May, is seven hundred and twenty-eight, and escaped, thirteen, leaving on hand twelve thousand two hundred and thirteen. I consequently lost six prisoners. I would also call your attention to the danger of having our present guard forces withdrawn, and their places supplied by the reserve forces of Governor Brown.

In conclusion, allow me to make a few remarks concerning myself; I am here in a very unpleasant position, growing out of the rank which I now hold, and suggest the propriety of being promoted. Having the full control of the prison, and consequently, of the daily prison guard, the orders which I have to give are very often not obeyed with the promptness the occasion requires, and I am of the opinion that it emanates from the reluctance of obeying an officer who holds the same rank as they do. My duties are manifold, and require all my time in daytime, and very often part of the night, and I would most respectfully ask that two commissioned officers (lieutenants) would be assigned to me for duty.

I am, Major, most respectfully, your obedient servant,

H. Wirz,
Captain Commanding Prison.

Major Thomas Turner, C. S. A.

The following letter was also offered in evidence:

Camp Sumter, Andersonville, Ga., July 21, 1864.

General S. Cooper, Adjutant and Inspector-General—General:
Your indorsement on the letter of Lieutenant S. R. Davis, relating

to the strength of the guard at this post, contains a very severe censure, which I am sure would not have been made if you had a clear comprehension of this post, of its wants and its difficulties. Reflect for a moment. Twenty-nine thousand two hundred and one prisoners of war, many of them most desperate characters; a post a mile long by a mile wide. The stockade for prisoners with one hundred and sixty yards of a mile in circumference; numerous avenues leading to the post to be guarded, public property to be cared for, guards for working parties, and the ordinary camp grounds for the troops, and you can form some estimate of the number it would require for these purposes.

The following are the daily guards required, and they cannot be reduced, but ought to be increased: Stockade, sixteen hundred yards around, fifty-two posts, ten supernumeraries, one hundred and sixty-six enlisted men, two commissioned officers. Hospitals, two uninclosed, one thousand seven hundred and thirty-five patients and attendants, guards, seventy-three. Twenty-three posts, sixty-nine men, four supernumeraries and one commissioned officer. Pickets around the stockade, two hundred and six; this picket is indispensable, to prevent escape of tunneling. Outlying pickets and railroad bridge guard, forty-three men and six commissioned officers. Guard with party cutting wood, daily, one hundred. Guard with working parties, twenty-five; this does not include accidental guards and camp guards. Total, five hundred and thirteen. Strength of guard July 2, four hundred and twenty-one, including the prisoners' guard detained here, from which deduct five hundred and seventeen sick, daily duty, two hundred and seventy; leaves one thousand five hundred and fifty-one.

You will observe that since Lieutenant Davis' report the detained prisoners' guard have been added to the strength of the guard. This gives the most favorable report at this post and the duties required of it. You speak in your indorsement of placing the prisoners properly. I do not exactly comprehend what is intended by it. I know of but one way to place them, and that is to put them into the stockade, where they have between four and five square yards to the man. This includes streets and two acres of ground about the stream. Respectfully, your obedient servant, John H. Winder,

Brigadier-General.

A letter was also read in evidence from Acting-Adjutant and Inspector-General Chandler, dated Andersonville, July 5, 1864, addressed to Colonel R. H. Chilton, assistant adjutant and inspector-general at Richmond. He gives an account of his inspections of the prison for federal prisoners of war and post Andersonville. He says that under the pressure of their necessities, they have dug numerous wells within the inclosure, from which they obtain an ample supply of water to drink, of good quality, excepting the edges of the stream. The soil is sandy and easily drained, but from thirty to fifty yards on each side of it the ground is a muddy marsh, totally

unfit for occupation, and having been constantly used as a sink since the prison was first established.

It is now in a shocking condition, and cannot fail to breed pestilence. An effort is made by Captain Wirz to fill up the marsh and construct a sluice, the upper end to be used for bathing, etc., the lower as a sink; but the difficulty of procuring lumber and tools very much retards the work, and threatens soon to stop it. No shelter whatever, nor materials for constructing any, have been provided by the prison authorities, and the ground being entirely bare of trees, none is within reach of the prisoners, nor has it been possible, from the overcrowded state of the inclosure, to arrange the camp with any system.

Each man has been permitted to protect himself as best he can, by stretching his blanket, or whatever he may have, above him, on such sticks as he can procure. Of other shelter there has been none. There is no medical attendance within the stockade. Many—twenty yesterday—are carted out daily, who have died from unknown causes, and whom the medical officers have never seen. The dead are hauled out daily by the wagon load, and buried without coffins; their hands, in many instances, being first mutilated with an axe in the removal of any finger rings they may have. Raw rations have to be issued to a very large portion, who are entirely unprovided with proper utensils, and furnish so limited a supply of fuel they are compelled to dig with their hands in the filthy marsh before mentioned for roots, etc. No soap or clothing has ever been issued.

After inquiry the writer is confident that by slight exertions green corn and other antisorbentics could readily be obtained; the present hospital arrangements were only intended for the accommodation of ten thousand men, and are totally insufficient both in character and extent for the present needs, the number of prisoners being now more than three times as great. The number of cases requiring medical treatment is on an increased ratio. It is impossible to state the number of sick, many dying within the stockade whom the medical officers never saw nor heard of till their remains are brought out for interment. The transportation of the post is also represented to be entirely insufficient, and authority is needed by the quartermaster to impress wagons and teams and saw mills, when not employed by the government and kept diligently occupied, and instructions given to the quartermaster in charge of transportation to afford every facility practicable for transporting lumber and supplies necessary for prisoners.

A supplemental report was made by the same officer, in which he says that the conduct of Captain Wirz is entitled to commendation, and that he is properly qualified for his position. Captain Wirz is recommended for promotion. It appears from other papers, that the assistant secretary of war (Campbell) indorsed the report, saying, "they show a condition of things which calls for the interposition of the Department; the prison being a reproach to the Confederates as a nation," etc.

Judge Advocate Chipman offered in evidence the report of the rebel Surgeon-General Moore, to show that the fault of the hospital was owing to Dr. White, the latter having failed to send his requisition direct to the medical purveyor; not having received supplies was owing to his own neglect. Colonel Chandler, it appears from another document, suggested the removal of General Winder as superintendent of the prisons, and the substitution of some one who has feelings of humanity, and who will not, like Winder, suffer the prison to remain as it was, in order that the excess of prisoners may be removed by disease and death. The discomfort and suffering are represented to be almost incredible, with a frightful per centum of mortality, thus showing a criminal indifference on the part of those charged with their care and comfort.

September 9.

The following paper was put in evidence by *Judge-Advocate Chipman*:

Andersonville, Aug. 5, 1864—Colonel R. H. Chilton, Assistant Adjutant and Inspector General, C. S. A., Richmond, Va., Colonel: The following additional report of my inspection at this point is respectfully submitted: Colonel Henry Fornes, in immediate command of the guard forces, deserves especial mention as an active, intelligent, energetic and zealous officer. Captain Henry Wirz, in immediate command of the prison, is entitled to commendation for his untiring energy and devotion to the discharge of the multifarious duties of his position, for which he is pre-eminently qualified. I respectfully concur in the recommendation which has been forwarded by General Winder for his promotion, and further recommend that not less than three captains or subalterns, specially selected for their fitness for the position, be furnished him as assistants.

Captain J. W. Armstrong, A. C. S., left the post shortly after my arrival on sick leave, locking up nearly all his books and papers. I was consequently unable to make a satisfactory examination into his affairs. Enough information, however, was elicited to show that he is a very inefficient officer, and entirely incompetent for the discharge of the duties of his position, and should at once be removed.

Captain R. B. Winder, A. Q. M., is an energetic and efficient officer, whose whole time and attention are requisite for the duties strictly appertaining to his position. The additional duties devolved upon him by the instructions from the quartermaster general's office, requiring him to establish and supervise a large shoe factory, should be imposed on some other officer of the department. The other staff officers at this post seem intelligent and efficient in the discharge of their duties, with the exception of Captain Samuel S. Bailey, A. A. G., who is mentally and physically incapacitated for their performance, and Surgeon E. Sheppard, and Assistant

Surgeons R. E. Alexander and A. Thornbaugh, who are represented by the chief surgeon as being incompetent and inefficient.

My duty requires me respectfully to recommend a change in the officer in command of the post, Brigadier-General J. H. Winder, and the substitution in his place of some one who unites both energy and judgment with some feelings of humanity and consideration for the welfare and comfort, "so far as is consistent with their safe-keeping," of the vast numbers of unfortunates placed under his control; some one who at least will not advocate, deliberately and in cold blood, the propriety of leaving them in their present condition until their number has been sufficiently reduced by death to make the present arrangements suffice for their accommodation; who will not consider a matter of self-laudation, boasting that he has never been inside the stockade, a place, the horrors of which it is difficult to describe, and which is a disgrace to civilization; the condition of which he might, by the exercise of a little energy and judgment, even with the limited means at his command, have considerably improved.

In obedience to instructions, I shall next proceed to the headquarters of the Army of the Tennessee, and request that any communications for me be forwarded there, to the care of the chief of staff. I am, Colonel, very respectfully, your obedient servant.

D. L. Chandler,

A. A. and I. G.

Colonel D. T. Chandler. Was in the Confederate service; have no retraction to make as to anything in my report; during my inspection, had a conversation with General Winder, who seemed very indifferent to the welfare of the prisoners, and was indisposed to do anything; remonstrated with General Winder as well as I could; when I spoke to him of the great mortality, and suggested that as the sickly season was coming on, the swamp should be drained, better food furnished, and other sanitary measures adopted, General Winder replied to me he thought it would be better to let one-half die, so they could take care of the remainder; my assistant, Major Hall, had previously reported to me that General Winder had made a similar expression to him; I remarked I

thought this was discreditable, when Major Hall said General Winder had repeated that expression to him several times. The R. B. Winder, quartermaster, spoken of in the report, is the cousin of General Winder; soon after my arrival at Andersonville, I rode around the stockade and found that the stream was very offensive; wanted General Winder to have an examination made in order that it might be drained; the commissary might have compelled the purchase of green corn; there was plenty of it there; cabbage in limited quantities might have been purchased; there was a difficulty in getting lumber; from the crowded condition of the prison much shelter could not be put up; Winder might have compelled medical officers to reside at the post;

there were 15 or 18 at the prison; on my suggestion about 900 of the sick were put under trees; urged upon the department the removal of General Winder, believing that if there was another head, a good deal might be done; Winder had not the inclination to exert himself; had also urged the removal of the assistant commissary, because of his physical inability, and because I was satisfied of his inefficiency and want of experience; his name was Armstrong; when in my report I spoke in commendation of Capt. Wirz, had no suspicion of the facts subsequently developed; at that time saw nothing to indicate cruel treatment to the prisoners; had myself been a prisoner and know how unwilling prisoners were to make complaints in the presence of officers for fear of being punished; took some of the prisoners aside and personally interrogated them; none made complaints against Capt. Wirz; they complained of the want of food, and insufficient clothing and shelter.

Cross-examined. James A. Seddon was secretary of war when I went to inspect the prison; Capt. Wirz showed me the rules, to one of which I objected, viz., punishing men who attempted to escape; thought General Winder's bitter feeling toward the prisoners was such as to render him indifferent to the comfort of the men, hence their sufferings; there was nothing in the regulations which authorized Capt. Wirz to shoot prisoners without trial except in self-defense; a dead line was established with the knowledge of General Winder; the language

establishing the dead line was to the effect that any man crossing it, would be shot without qualification.

John Pasgue. Am of the naval service; saw a man's dying in the chain-gang; was told by a rebel sentinel that for every Yankee he shot he received thirty days' furlough and three months' extra wages.

James E. Marshal. Am of the 42nd New York; saw two prisoners shot for approaching the dead line; in these cases the sentries were released to go on furlough. Rations were stopped if the men would not form in line in such a way as to please Capt. Wirz; knew of a man who died from the effects of dog bites.

W. M. Peble. Was detailed as clerk to Colonel Forno, a rebel officer; saw a man in the stocks who I thought would drown, as a heavy rain was falling upon his face; held my umbrella over him for a while, and then went to Capt. Wirz to express my apprehension; Wirz said, Let the — Yankee drown; in a few minutes thereafter, an officer from Capt. Wirz's headquarters, took the man out of the stocks; the crops were not so good in 1863 as in the year before, but the farmers had a surplus.

W. W. Crandall. Am of the 4th Iowa; saw a man being badly bitten by dogs and fastened with chain and ball for several weeks; I asked Wirz for his release, Wirz refused; the legs were swollen, and had a putrefied look; the man finally died; as a detailed sexton, helped to bury thirty or more of the men who had been shot; Wirz said if more prisoners were sent, he

could take care of more — Yankees than four regiments in front; prisoners who had money could procure food; one of them bought a pie, but soon vomited it up; another prisoner nearby grabbed up the ejected pieces and ate them.

Cross-examined. The dead were buried by some of the rebels; said this graveyard would make a good vineyard; the Yankee bones affording good manure; let us invite their Yankee friends to come and eat the grapes; I was put in the stocks for attempting to escape.

Willis Van Buren. Am of the 2nd New York; blankets and pants from the Sanitary Commission were appropriated by the rebels; Wirz said to me that he could take care of more — Yankees than Lee at the front; Wirz threatened to shoot me for some trivial offense, and ordered the guard to fire upon a man who stepped out to pick up a piece of wood; prisoners were reduced to skeletons, and would go to the sinks to pick up undigested particles of food; saw several cases of shooting men; one of them was said by at least twenty men to have been shot by Capt. Wirz himself.

Major General Wilson. The rebels, during the war, drew supplies from Central Alabama and Georgia, which could have been sent in sufficient supplies to Andersonville; there were ample means of affording comforts at the prison, which I examined on 1st July; saw the remnants of only ten sheds; the barracks for the troops were fair; shelters could easily have been erected for the Union prisoners; there

was plenty of timber in the neighborhood, just such a place as troops would like to encamp for wood and water, if they wanted to winter; plenty of black labor in that country; thirty men a day would have cut wood enough for 1500 men; on my arrival at Macon, my first inquiry was as to the condition of Andersonville prison, and who was responsible for it; sent two officers there, who reported that Wirz was still there; immediately ordered Major Noyes to return and arrest Wirz, which he did, and brought him to Macon; remanded him to prison and requested that he be brought to trial; no protection was ever granted to Capt. Wirz through me; I ordered his arrest for the purpose of bringing him to trial, and excepted him from the benefit of the capitulation of Johnston to Sherman.

Cross-examined. There were 250 Union prisoners at Andersonville when I reached there; they were nothing but shadows, and could not be moved without endangering their lives; many died after they were brought into my lines.

MAJOR GENERAL GEARY. Did you offer any safe conduct for Capt. Wirz's return? No, except to protect him until I delivered him into such hands as the Secretary of War might direct; my officers said they had risked their own lives to protect him, and but for Major Noyes the post guards at Chattanooga would have killed him.

George Walling testified as to the resources of the country in and around Andersonville. *Patrick Bradley* as to what he had

seen at Andersonville in the matter of cruelty. *John H. Fisher* (negro) and *Henry C. Lull* also testified regarding events in the same locality.

Felix de la Baum. Am of the 79th New York; saw Capt. Wirz fire two shots at two men who were drawing water; saw one of them in a dying condition; Wirz accompanied the act with the exclamation, that's the way I get rid of you — —; saw many other perpetrations of cruelty, such as keeping men for long periods without water, putting men in the stocks, fastening them with ball and chain, bucking and gagging, and then hunted by the hounds; saw two men killed at the dead line; when I was conveyed to the prison I weighed 158 pounds, but when I left only 90; was a mere skeleton; owed the saving of my life to Dr. Bates. Owing to the starved condition of the prisoners, rats were a great delicacy; Dr. Bates managed to get us something to eat, and therefore no more rats were caught.

Rev. Father Hamilton. Am a priest of the Roman Catholic church, residing in Macon; acted as a missionary at the Andersonville prison; saw the distressing condition of the Union prisoners by sickness and suffering and great mortality; General Howell Cobb asked me what I would recommend should be done; I advised the parole of all the prisoners to Tallahassee.

Judge Advocate Chipman. The law protects you from disclosing the secrets of the confessional. Please state, if you feel authorized to do so, to what cause the

sick men under your ministration ascribed their dying condition.

Father Hamilton. I cannot answer the question, for the confessional is one of the most sacred and inviolable of our institutions. I do not decline to answer because I want to take any advantage, but because outsiders might charge I had violated the confessional; therefore I respectfully decline to answer. I and Father Wheelan were not chaplains of Anderson prison, but rendered gratuitous services there as priests.

Charles E. Tibbles. Am of the 4th Iowa; saw the cruelties of Capt. Wirz, and the filthy condition of the grounds; the filth was buried from a foot to eighteen inches deep; when the rain fell, it was washed out, filled with lice and maggots, and this extended throughout the prison; once Wirz said to me, Bring me Bill Crandell and I'll give you five hundred dollars out of my own pocket; and you, you — I'll make you smell — before night. You are sentenced to work in the graveyard every day, put on half rations, stand in the stocks at night, and be the last men exchanged. If you don't work, I'll put you on the top of the dead and cover you up.

John H. Goldsmith. Am of the 14th Illinois; was prisoner at Andersonville; was detailed to Capt. Wirz's office. He issued an order for the guards to fire upon any one who spoke to them, that in case Union prisoners should fail to report any of the missing men, they should be placed in the stocks, or bucked or gagged. The rations to the prisoners were just half those

issued to the rebel troops. For three days Capt. Wirz increased the ration of meal and peas to a pound and a quarter a day, and then put them back to the old standard, remarking that as the Yankees were getting — saucy, he would bring them to their milk; heard Capt. Wirz say that he was doing more good there than in the field, and that he whipped more men than General Johnston did; made out a furlough for a rebel soldier, who said he had earned it by killing a Union prisoner; the rebel soldier's name was Scott, and the name of the prisoner he killed

Henry Lockmire, of the Pennsylvania Reserves; Wirz ordered him to write out a furlough for thirty days, the rebel soldier saying that he had earned it.

Jasper Culver. Am of the 1st Wisconsin; a chain-gang of 12 men complained because one of their number was very offensive from diarrhoea; this man was detached and left to himself; the 34-pound ball fastened to his leg, and the iron collar round his neck; the irons were not taken from the man until after he died; heard Capt. Wirz declare he was doing more for the Confederacy than any general in the field.

Sept. 19.

Captain Wirz was brought into the courtroom attended by a military guard. He continued very sick, being unable to sit, and was allowed to lie on a sofa.

The physician of the Old Capitol Prison was in attendance and administered ether to the prisoner.¹⁹

R. G. H. Kean. Was employed under the Confederate Government as chief of the bureau of war; identify the handwriting of Secretary of War Seddon and Assistant Secretary of War Campbell; had a conversation with Judge Campbell on the subject, but did not know that it was acted upon by the Secretary of War, although the document lay upon his table.

Walter T. Davenport. Reside in Americus, Ga.; was the agent for four of the counties in the year 1864; received as tithings 247,768 pounds of bacon, 38,900 bushels of corn, 3,567 bushels of wheat, 3,420 pounds of rough rice, 817 bushels of peas, 3,700 gallons of sorghum and 1,168

pounds of sugar, from the 1st of January to the 19th of April; received from the same counties 155,726 pounds of bacon, 13,591 bushels of corn, 86 bushels of wheat of the old crop, 2,077 pounds of rice, 854 bushels of peas, 5,082 gallons of syrup and 56 pounds of sugar; there was also a depot at Andersonville; had heard that the ladies near Andersonville had made two successful efforts to relieve the prisoners; but third time they were repulsed by General Winder with insult.

Major Noyes. I went to Wirz's house at Andersonville, where I found him with his wife and two daughters; it was a hard thing to take a man from his

¹⁹ There had been no session of the Court since Sept. 12th on account of the prisoner's illness.

family; the women were crying, and there was much trouble; the arrest was made as quietly as possible; informed Wirz and his family that if General Wilson found that he (Wirz) had done nothing more than his duty, and acted in obedience to orders, he would probably be released; General Wilson did not direct or authorize me to give prisoner any promises; prisoner remained under guard all the time, and was never on his parole; on the way from Chattanooga to this city, prisoner's life was repeatedly threatened, and he would have probably been killed by incensed soldiers, if he had not all the time been under guard.

Captain Jas. M. Moore. Am assistant quartermaster United States army; the number of burials at Andersonville was 12,912; 451 bodies were unknown; the number of graves in the small-pox cemetery was 64; these included all I have been able to find; the bodies were buried in trenches from 100 to 200 yards long, and so closely that the tablets, containing the names and rank of the deceased almost touched; the graves of those last buried were not found marked; no disinterments were made for reburial.

John M. Yonker. Am of the 12th U. S. Infantry; at Andersonville a sick man who had escaped from the hospital was recaptured by bloodhounds; his right ear was almost bitten off, and other serious injuries inflicted; took a piece of his shirt and tied up the wounds; the man gave a likeness to a companion to deliver to his mother in the event of his death, which occurred the next morning; de-

ceased had traveled 30 miles when he was pursued by the dogs; he endeavored to climb a tree, but was unable from weakness to do so; lying prostrate the hounds attacked him; I met the old fellow who had charge of the hounds in the graveyard; asked him why he committed such cruelties, he replied that it was by order of Capt. Wirz, who told him not to bring back any of the Yankee sons of bitches.

The first day of my arrival at Andersonville, saw Wirz threatening and cursing; came at once to the conclusion that Wirz was a rough customer; saw a piece of tin lying on the ground, and being a blacksmith, thought I could make myself a saw of it. Wirz seeing me reaching for the tin, called out to the guard, Why don't you shoot the Yankee son of a bitch?

James P. Stone, of the 2nd Vermont, testified as to his observations at Andersonville, mentioning several cases of cruelty similar to those heretofore stated.

George Conway, of the 3rd New York, testified that he saw Capt. Wirz himself, while in a sentry box, shoot a man who tried to recover his tin cup from the stream into which he had accidentally dropped it.

D. S. Orcutt, A. Boyle, William Ball, W. A. Griffin, J. H. Burns also testified as to the cruelties at Andersonville.

September 20.

Dr. Thornburg. Was in the Confederate army, a surgeon; was assigned to duty at the Andersonville hospital. Among the reports which I made was the following:

Confederate States Military Hospital, Andersonville, Georgia, September 26, 1864.

Sir: I would most respectfully call your attention to the very bad sanitary condition of the second division, as well as the whole hospital, to the immense quantity of filth accumulating in the streets, and to the filthiness of the tents and patients, and to the fact that it cannot be otherwise until we are furnished with the means with which to work; patients lying on the cold ground, without bed or blanket, and also that we have a very scanty supply of medicines, and that the rations are not of the proper kind and not issued in proper quantity. Hoping that the proper steps may be taken to remedy these defects, I am, sir, your obedient servant.

A. Thornburg,

Assistant Surgeon to R. R. Stevenson, Surgeon in Charge, P. A. C. S.

Had made several similar reports to Dr. White; frequently saw the prisoners make pants out of what little bed-clothing they could get; but a few vegetables were issued, and those in small quantities; knew there was an order from the War Department placing the prison hospital on the same footing as the Confederate hospitals. The hospital fund could have been drawn, and it would have supplied the hospital with vegetables. The meal issued was very coarse and unsifted. Under Dr. Stevenson things were little better than they were under Dr. White. It was difficult to procure medicines; when requisitions were made it was some days before they were filled, the medicines most needed frequently not being furnished at all; mortality was great, I attributed it to want of proper diet, the crowding of men in small space, and the lack of shelter and fuel. There were 50 or 60 deaths per day in the hospital; their places would be filled by sick men from the stockade. Some died who had never received medical attention. Per-

sons waiting at the stockade gate for medical attention would die before being carried to the hospital.

Recognize this book as the hospital book kept at Andersonville. Saw no marks to indicate that it had been tampered with except some pencil marks, which I suppose are check marks.

Frederick M. Jayne. Am a clerk to the Commission; prepared an exhibit of the number of deaths from the book; made the check mark referred to by last witness.

Dr. Thornburg. The number returned to the stockade from the hospital was very small; many who got well were detailed as nurses or on some duty outside of the stockade; had frequently seen men brought out of the stockade, and no one knew what they died of; one half of those who died could have been saved had proper diet, shelter and accommodations been furnished; the prisoners built shelter from boughs, old blankets, or anything they could get; there was some frost and a little ice during the winter; in the condition of the

prisoners the weather was cold enough to freeze them to death; during the summer of 1864, the thermometer stood about 96 or 100 in the shade; in the summer of 1865 it was much warmer.

Colonel Chipman called attention on the register to the name of O. Jerrety, of the 106th Pennsylvania regiment, who was frozen to death during the winter of 1864.

To Mr. Baker. Thought the buildings were erected in the stockade by order of Capt. Wirz. The register offered in evidence was the property of the hospital and in charge of Dr. White; frequently the prisoners would be sick when they arrived. Never treated a person who had received a gun-shot wound inside the stockade; saw a man's leg amputated who had been shot by the sentinel. Have frequently seen men brought out of the stockade with wounds upon them; saw some who had their skulls fractured. Treated one or two who had been wounded in the stockade by their comrades; in the early part of June treated 500 patients per day. Was never interfered with by Capt. Wirz; thought he showed a disposition for the surgeons to do all they could for the prisoners. Large quantities of vegetables were entered on the hospital books as bought, but they were never brought into the hospital, though bought with the hospital fund; there must have been fraud committed; if the amount of hospital fund allowed by the Government had been drawn, it would have been enough to supply all necessary things to the hospital. Had I been furnished with the money, could have

bought plenty of vegetables; all kinds of vegetable diet was required for the hospital; with eggs, butter, chickens, etc.; sometimes we got wheat bread. In the fall of 1864 several priests were allowed to visit the sick and administer to the prisoners; they also gave prisoners money, and sent a large quantity of flour, which was baked in the bakery and distributed to prisoners.

An order forbade any citizen going into the hospitals without a pass from Capt. Wirz; citizens were not allowed to trade with prisoners. I received some blankets for my division which had been furnished by the United States Sanitary Commission.

A. G. Blair. Am of the 22nd New York. Once I reached over the dead-line to procure water, when the sentry fired at me, but the bullet passed over my head, striking two men, one of whom, in his tent, was mortally wounded. Wirz planted a range of flags inside of the stockade, and gave the order that if a crowd of two hundred should gather in any one spot beyond those flags he would fire grape and canister upon them.

Charles H. Russell. Was in the 1st Wisconsin. Was taken to Andersonville, arriving there May 27, 1864; Wirz told his orderly to take everything that the Yankee cavalry — — had. Threatened to shoot me because I spoke to him about the bad bread. He had a pistol in his hand; presented it to my head and threatened to shoot me. Have seen men shot by the sentinels; one man fell and his arm went under the dead-line, and the guard fired and killed him.

Saw Capt. Wirz go up to the sentry and shake his hand after he had shot a man, and called him a bully fellow. One man of my regiment was vaccinated, and died about 1st of September. He had no other disease; sores were all over him on his arms and legs; the swamp was eighteen inches or two feet deep with maggots, and the men had to pass through it frequently; had often seen men in there digging roots; heard Wirz about 4th June say Johnston had cleaned out Sherman and taken him prisoner; Wirz said he had been an orderly sergeant in an Illinois regiment, and was under Sigel.

J. Burns Walker. General Howell Cobb came to Andersonville on 4th March, and the paroled prisoners were notified if we desired to hear the general we could go down. General Cobb made a speech, saying he was sorry that any prisoners had been captured, and that he should hang every prisoner if he had his own way; he said, If the prisoners come up to your house to take your chicken or your pig, hang them; if a prisoner comes up to your house to speak to your women, hang him. He said: If President Lincoln ever gets me he will hang me, and if I ever get President Lincoln I will hang him.

He said he was glad to find the state of things around Andersonville to be such as he did, and recommended Capt. Wirz as being a very meritorious and efficient officer, doing his duty, and doing it well. He said to the Confederate troops around him: Look over into the stockade, pointing his finger directly

to it; go look over there, and compare yourself with those men, and go home and kiss your wives and sweethearts, and see if you cannot gain your independence. He further said, I would treat the prisoners here well; I would feed them well; I would care for them; pointing with his hand to the grave-yard, as if that would be the care he would give them. The speech was received with some hurrahing, but not enthusiastically.

Ambrose Spencer. Resided nine miles from Andersonville; visited the prison every month; had ample opportunities of ascertaining its condition. The odor from the stockade could be detected at a distance of two miles. That section of country was well supplied with mills, both for grain and lumber; the most densely wooded of any in the United States. Southwestern Georgia was regarded as the garden spot of the Confederacy and from which immense quantities of supplies were drawn for the army; there was an uncommonly large supply of vegetables in the summer of 1864, some of which were taken from Americus to Andersonville for the use of Confederate officers. Had knowledge of the ladies in the neighborhood gathering clothing and food for the relief of the prisoners. General Winder said, with an oath, that he believed the whole country was becoming Yankee, and that he would be — if he wouldn't put a stop to it; if not one way, he would another. I replied that the exhibition of humanity was no evidence of the fact of that assertion. Winder said it was a slur on the Confederate Government

and a covert attack upon himself.

Wirz said if he had his own way he would have a house built for a certain infamous purpose, in which he would place benevolent women. R. B. Winder concurred in this remark by laughing. Asked him if he was going to erect sheds and shelter, and why he was cutting down the trees, to which he replied, I am going to build the pen so as to destroy more — Yankees than can be destroyed at the front.

Dr. B. J. Head. Was surgeon at Andersonville in July and August, 1864. Saw the sufferings of prisoners from disease; for want of proper diet, shelter and medicine; men would often die for want of stimulants. When I visited my home at Americus mentioned to my wife the sufferings of the prisoners, and she went around the town and gathered considerable supplies, which were forwarded to Andersonville. Some of the ladies went up with them to the Andersonville depot; Lieutenant Reed swore that the goods should not go into the prison; some said that I should be shot, and others that I should be hanged for my agency in procuring these supplies. Called on General Winder and informed him that it was in accordance with his permission that supplies had been carried into the stockade; General Winder said, I do not know how in the — and — there are so many sympathizers for the — Yankees. I replied, This is only a mission of charity and mercy, when General Winder exclaimed, Every — Yankee sympathizer and —

Yankee ought to sink into —. The provisions were distributed among the Confederates, and the ladies returned to their homes.

Charles H. Russell (recalled). Saw two instances of cruelty by James Duncan, a rebel in charge of the distribution of bread; a prisoner stooped to pick up a crust, when Duncan jumped from the wagon and kicked him three or four times; the man died several days thereafter in the stockade; another poor fellow who asked for bread was similarly treated by Duncan.

W. W. Crandell (recalled). Duncan took from a prisoner named Armstrong, who was in the stocks, a picture of a near friend; prisoner pleaded for its return, when Duncan said he might consider himself fortunate if he got out of the stocks at all; Duncan also helped himself to the prisoner's money.

Samuel M. Riker. Prisoners were robbed at Richmond before they were conveyed to Andersonville. Duncan was in charge of the bakery and cook-house, and was also a government detective under Capt. Wirz.

C. E. Smith. Heard Capt. Wirz order a sentinel to shoot a man who had reached beyond the dead-line for water; the sentinel hesitated, when Wirz said if he did not shoot the — Yankee he (Wirz) would shoot him; the sentinel then fired, the ball taking effect in his head, and killing him instantly.

Benjamin B. Dykes. Was Confederate railroad agent at Andersonville; there was a good deal of provisions on hand there at all times, excepting when the place was first opened; the freight trains were regular, from

one to six, according to circumstances, running every day; vegetables in plenty were brought to the depot.

Ambrose Henman. Saw men shot for approaching the deadline. After one had been killed because he reached out for a crumb of bread I asked Capt. Wirz if I might remove the body. Yes, said Capt. Wirz, take him and go to — with him.

Thomas Walsh. Kept a memorandum book at Andersonville; it shows no rations were issued on 26th March, 1865, and not served until 3 o'clock the next day; made the entry: A number of sick, weak and hungry—a sad thing for us all. No ration. By paying \$3 to the guard the next day, at five, a pint of meal and two or three ounces of

mule flesh were issued as a ration. By paying 3 to the guard a prisoner could get out to gather wood. Did not know of any man who was sent to the hospital who came out alive. On July 4 the prisoners got rations, but being full of maggots, they threw them away. Capt. Wirz said, May G—d A—y — me forever and forever if I do not shoot with my revolver the first man who attempts to leave the ranks.

Sept. 22.

Dr. G. S. Hopkins. On 22d July, 1864, was assigned to duty in the hospital at Andersonville. Together with Surgeon White, was ordered to make a thorough inspection of the prison and hospital, with a view to their improvement. This is the report made:

Andersonville, Ga., Aug. 1, 1864.—Brigadier General John A. Winder—General: In obedience to your order of the 28th of July, requesting us to make examination of the Federal prison and hospital at this place, and to ascertain and report to you the cause of disease and mortality among the prisoners, the measures necessary to prevent the same, has been complied with, and we respectfully submit the following causes of disease and mortality: First, the large number of prisoners crowded together in a small compass. Second, the entire absence of all vegetables as diet, so necessary as a preventive of scurvy. Third, the want of barracks to shelter the prisoners from sun and rain. Fourth, the inadequate supply of wood and good water. Fifth, badly cooked food. Sixth, the filthy condition of prisoners and prison generally. Seventh, the morbid emanations from the branch or ravine passing through the prison, the condition of which cannot be better explained than by naming it a morass of human excrement and mud. Preventive measures: First, the removal immediately from the prison of not less than fifteen thousand prisoners. Second, detail or parole a sufficient number of prisoners to cultivate the necessary supply of vegetables, until this can be carried into practical operation, the appointment of agents along the different lines of railroad to purchase and forward a supply. Third, the immediate erection of barracks to shelter the prisoners. Fourth, to furnish the necessary quantity of water, and have wells dug to supply the deficiency. Fifth, divide the prisoners into squads, place each squad under the

charge of a sergeant; furnish the necessary quantity of soap, and hold these sergeants responsible for the personal cleanliness of his squad; furnish the prisoners with clothing at the expense of the Confederate Government, and if that Government be unable to do so, candidly admit our inability, and call upon the Federal Government to furnish them. Sixth, by a daily inspection of bake-house and cookery. Seventh, cover over with sand from the hill-sides the entire morass, not less than six inches deep. Board the stream or watercourse, and confine the men to the use of the sinks, and make the penalty for disobedience of such orders severe. For the hospital, recommend, first, that the tents be floored with plank; if plank cannot be had, with puncheons; and if this be impossible, then with fine straw, to be frequently changed. Second, find an adequate supply of stool boxes, and recommend that the number be increased, and that the nurses be required to remove them as soon as used, and before returning them see that they are well washed and limed. Third, the diet for the sick is not such as they should have, and we recommend they be supplied with the necessary quantity of beef soup, with vegetables. Fourth, we also recommend that the surgeons be required to visit the hospital not less than twice a day.

We cannot too strongly recommend the necessity for the appointment of an efficient medical officer to the exclusive duty of inspecting daily the prison hospital and bakery, requiring of him daily reports of their condition to headquarters.

We have the honor to remain, general, very respectfully, your obedient servant,

(Signed) L. H. Hopkins.

Acting Assistant Surgeon.

Dr. Hopkins. I submitted this report to Dr. White for his signature. He said that it contained the truth, and that he would sign it and send it to General Winder, but he did not sign it; do not know that anything was done to carry out the suggestions.

Judge Advocate Chipman submitted a general order of General Winder, addressed to Dr. Hopkins, to show that the Richmond authorities had knowledge of the conditions of the Andersonville prison and that General Winder had authority to apply a remedy.

Dr. Hopkins (cross-examined). It was the implicit confidence

General Winder had in Wirz that caused the state of things to exist, otherwise General Winder would have visited the prison.

U. B. Harrold. Was a shipper of supplies at Americus; do not think they were ever out of bacon and meal; there was as much there as could be shipped.

Cross-examined. The provisions furnished to the prisoners were the same as furnished the Confederate army.

Dr. G. L. B. Rice. Was on duty at Andersonville; knew the terrible conditions of the stockade; men died from starvation, cold, exposure and other causes; medicines were not furnished in the professional way, but by a

formula or number, according to the rules of the prison; instead of mentioning the medicine, the prescription would be for number one or two, or any other number, a specific for every disease being designated by a number; there was no other way in which medicines could be obtained; Dr. Stevenson, who had been in charge of the hospital, was tried and found guilty of embezzling the hospital fund, which amounted from \$100,000 to \$150,000.

Captain Wilson French. Was of the 17th Connecticut; with 65 other officers, I was confined in a room 60 feet long and 25 feet wide; we were there five weeks; if we had not had the privilege of buying provisions we would have starved to death.

J. R. Griffin, Sergeant J. F. Alden, Robert Tate, S. J. M. Anderson, W. B. Francis, John H. Cain, testified to affairs at Andersonville, and the cruelties of Capt. Wirz.

George W. Gray. Was in the Indiana Cavalry; at Andersonville we were ordered on arriving to place our blankets, knapsacks, haversacks, canteens, etc., in one place, when an officer, mounted on a grey horse, rode up and told the Confederate prisoners to help themselves, and let the prisoners have the remainder; there was nothing left.

In June, 1864, I and a young soldier named Underwood of 7th Indiana, went to the sutler's tent; Wirz was there; Underwood asked for something to rub his wound with; the sutler said he would give it; Wirz said, No, he cannot have it unless he pays me a dollar; Underwood gave him his only money, which was a

ten-dollar bill; when he asked for the change Wirz kicked him out of the door. I was put in the stocks four days for attempting to escape; knew a man to die in the stocks in September, 1864; the negroes took him out of the stocks after he was dead, threw his body into a wagon, and hauled it off; knew Wirz to shoot young William Stewart, of the 9th Minnesota; he and I had gone out of the stockade with a dead body; met Capt. Wirz; he asked us by what authority we were out there. Stewart replied we were there by proper authority; Wirz drew his revolver and shot him; after Stewart was dead the guards took from his body \$20, and Wirz took the money from them and rode off, telling them to carry me to prison; it was my intention to escape, and for that reason I had gone out, but was not attempting to do so at the time; when the prisoners were being removed to the cars to be exchanged, Wirz gave orders to Lieutenant Davis to bayonet any man who lay down in the road; had seen men crawling on their hands and knees to the cars bayoneted by the guards; heard one of the surgeons ask Wirz when he was going to remove the Yankees, and Wirz's reply was, — these Yankees, they will all be dead in a few days, anyhow; saw a prisoner who had been caught by the dogs with part of his cheek torn off, and his arms and legs gnawed so that he only lived 24 hours; the first time I saw Wirz was one day I heard Lieutenant Davis call his name at the gate. I took him to be a German by his talk. When I was put in the stocks he said to me: Cott tam

you, I fix you. For this reason I took him to be a Dutchman. Once I heard a surgeon say to him, When are you going to remove

those prisoners? and Wirz replied, Damn those Yankees, they will be all dead in a few days, anyhow.

Colonel Chipman. Captain Wirz, will you be good enough to stand up?

The *Prisoner*, who had been lying all day on a lounge, turned round, partly raising himself.

Colonel Chipman (to the witness). Do you recognize that man as the man who shot your comrade?

Gray. That is the man.

The *Prisoner* made an effort to contradict the witness, muttering some incoherent expressions and sank on the lounge, where he was furnished with cold water, and was fanned by the officers. The court thereupon adjourned, GENERAL WALLACE ordering the room to be cleared instantly so that the fainting and apparently dying man might have more air.

²¹ James W. Duncan, who had ill-treated some of the Andersonville prisoners, causing the death of one of them, was arrested in the courtroom yesterday, and committed to the Old Capitol Prison. He had been summoned as a witness for Captain Wirz.

September 23.²¹

Captain J. H. Wright. Was a Confederate soldier; in the absence of the commander of the post, Capt. Wirz had the command, and countersigned furlough papers.

Lewis Dyer. Am of the 12th U. S. colored troops. Captain Wirz proposed to the colored prisoners that if they took the oath to the South, they could choose their own masters; some of the guards said Capt. Wirz said he would make the white prisoners join the Confederates by starving them; was for a time a servant at the house of Dr. White, ordered so by Capt. Wirz; received no pay; Capt. Wirz brought to Dr. White's 3,000 letters, addressed to Union prisoners; he handed them to Captain Reed's wife, who was staying there; she took everything out of the letters, such as money, needles, thread, pictures, etc. Mrs. Reed laughed at the con-

tents of the letters, making fun of them, and ordered me to burn them; saw Confederates wearing the clothing which had been sent to the prisoners; heard the surgeons at Dr. White's say, I have poisoned five Yankees today; and another would say, I have poisoned ten. They were laughing and drinking at the time; heard the surgeons say they were going to vaccinate and take off the arms of the Yankees; they would be laughing about the poison; Mrs. Reed took from the letters several hundred dollars, which she kept in a box.

September 26.

Dr. M. Marsh. Was employed as an agent of the Sanitary Commission of Georgia, Florida and the Carolinas; sent from Beaufort large supplies of clothing, such as shirts, drawers, pantaloons and hats, and also crackers, condensed milk, coffee, tea, and other articles of food. The goods were passed over to the

agent of the Confederate Government at Charleston. It was known in June, 1864, that there was suffering at Andersonville, as escaped prisoners gave the information; have no evidence that

the goods were received by the prisoners. In November, an order was received from Washington not to send them any more supplies.

The *Judge-Advocate* read a letter of Captain Wirz, dated Andersonville, Nov. 12, 1864, acknowledging the receipt of eighteen packages of clothing, five bales of blankets, one box of shoes, four boxes of pants, three boxes of drawers, socks and shirts, and stating that he should distribute them without delay.

THE DEFENSE.

Father Hamilton (recalled). While I was engaged in my ministerial duties at Andersonville, Capt. Wirz was doing everything in his power to promote the physical and spiritual comfort of the prisoners.

Father Wheelan. Saw Capt. Wirz commit no personal violence, although he made use of profane language; men were hunted by the dogs; never heard that any one was torn by them; Capt. Wirz gave me permission to distribute supplies among the prisoners; never heard of Wirz killing or striking a man with his pistol, or kicking a man so that he died.

Cross-examined. Do not say that Wirz did not do such things, if he did it was probable I should have heard of them; heard from the prisoners that Capt. Wirz was vicious and harsh. Several other clergymen were also at the prison.

To the COURT. I bought some flour in January; it was for the benefit of the prisoners, without distinction of sect or creed; frequently heard prisoners complain that they did not get enough to eat; do not know

whether spoiled meat was furnished or not.

Colonel Fannin. Was of the 1st Georgia; at Andersonville from May, 1864, to September; at first the guard did not number more than two or three hundred, but it was increased as the number of prisoners increased, until there were from 1200 to 1500 men; their arms were in great part flint and steel locks; Capt. Wirz could not punish or reward the guards for anything they had done; he could grant furloughs only when he might be temporarily acting as commandant of the post; never heard while in command of a furlough being given to a guard for shooting a Union prisoner. No guard applied to me for a furlough on the ground of shooting a Union prisoner. Turner, the owner of the dogs, belonged to my regiment. Gen. Winder ordered him to procure a pack of dogs; these dogs were employed to hunt Confederate as well as Union deserters; the sentences of Confederate courts-martial for offenses were digging up the swamps and the ball and chains; if Capt. Wirz had kicked, shot and maltreated prisoners, I should have

heard of it; frequently made requisitions on the quartermaster for tools, but was unable to obtain them; there was a good deal of grumbling among the troops about the rations, and desertions occurred from that cause; Wirz was sick last summer near Andersonville, and was absent from the post some weeks; frequently heard whipping in the stockade at night from the sound of the lick, screams and fighting going on; this was at the time the raiders so much disturbed the camp; six of the latter were hanged, Captain Wirz having previously turned them over to a jury of the Union prisoners.

September 27.

Colonel Fanning. Heard General Cobb make a speech about 4th of March, 1865; cannot precisely relate what the General said, but his address was more to the troops than to others, as there had been great disaffection in the camp, and men were constantly deserting. He insisted that the soldiers should do their duty.

Lieutenant John F. Heath. Was of the 3rd Georgia; in the summer of 1864, Capt. Wirz was sick and expected to die; had seen him take from a lot of Federal prisoners, one-half of the vegetables which they had bought.

Dr. F. G. Castlen. There was a good deal of complaint among the troops about insufficient rations; the clothing was very inferior, and there was no diet suitable for the sick; never heard of Capt. Wirz maltreating prisoners, and know of no cases of starvation, emaciation and wasting away. There was much com-

plaint in North Carolina and elsewhere about impure virus for vaccination. From this cause many private families were sick, and expected to die.

Colonel Persons (recalled).

Was first sent to Andersonville as commandant by General Winder in Feb., 1864; Capt. Wirz came there in March; the latter's local orders were framed by himself; but the general orders came from General Winder; Capt. Wirz urged that the hospital be removed out of the stockade; I petitioned General Winder to permit this to be done, and he declined; Capt. Wirz protested against crowding any more prisoners at Andersonville; General Winder ordered the dogs to be employed; they were common rabbit dogs, and sometimes used for catching negroes; Capt. Wirz expressed great displeasure at the meagerness of supplies, and the deficiency of the quartermaster's department; never heard of Capt. Wirz giving furloughs for shooting Union prisoners; if so, would have heard of it; as commander of the post, I gave furloughs for under seven days, but all over that time were granted by General Winder; if any extraordinary violence had been practiced by Captain Wirz I would have heard of it; there was great difficulty in obtaining lumber for the prison.

September 28.

Colonel Persons. While I commanded at Andersonville boxes of supplies from the Sanitary Commission reached there; had them sent to the prisoners, for which they thanked me; never knew of Capt. Wirz being absent with the dogs; it was a penitentiary offense for the Con-

federates to trade for greenbacks; this was so declared by Congress, and by a statute of Georgia; the country around Andersonville was poor, and vegetables were scarce; soon after some negroes had reached Andersonville I addressed a communication to General Winder, asking what disposition should be made of them; the reply was that the question was held in abeyance at Richmond, and until it was settled they should be treated as prisoners of war; did not know whether sentries were relieved after shooting Union prisoners; such information never reached me; in the rules and regulations for the government of the prison, signed by Capt. Wirz, trading by the prisoners was interdicted.

Cross-examined. Think it was impracticable for Capt. Wirz to furnish all the shelter required; some shelter might have been built. I never exercised the right to punish a prisoner; Capt. Wirz never received any order for that purpose from me; he was responsible for what he did there; Capt. Wirz drew up the orders and regulations, and they had my approval; Capt. Wirz labored indefatigably; whether or not he accomplished all he desired I do not know, but I do know the prison was not half cared for; think the responsibility rests on those who crowded so many prisoners there.

To the COURT. Capt. Wirz drew up the prison rules by his own authority; I approved of them because I thought they were right; there was no dead line therein provided for; it was subsequently erected by virtue of Capt. Wirz's own rank.

Nazareth Allen (recalled). Was of 3rd Georgia Reserves; there was a good deal of sickness in my regiment; some of the men strayed away; the effect of the bad rations was diarrhoea and other diseases; saw some of his men wearing old clothing which they had purchased from the Union prisoners; when Stoneman's captured raiders were brought to Andersonville they were searched and jewelry, paper money, ladies' shawls, pocketbooks, gold, tablespoons, and forks, and daguerreotypes taken from them; never heard that a furlough could be obtained for shooting Union prisoners.

Cross-examined. Knew of no soldier dying from starvation, or emaciated because of insufficient food; think the clothing I saw on rebel soldiers was taken from the dead bodies of Union soldiers.

Sept. 30.

Capt. Weytt. Never heard that soldiers received furloughs for shooting Union prisoners; had frequently carried vegetables into the stockade for their relief; Capt. Wirz permitted Masonic honors to be paid to a deceased prisoner; Lieutenant Davis was in charge while Capt. Wirz was sick.

Cross-examined. Have no personal knowledge of what Capt. Wirz did in the stockade, but outside of the stockade knew that the accused put prisoners in the stocks and the chain-gang; Turner, who had charge of the dogs, told me that Capt. Wirz had promised him \$30 a piece for capturing prisoners; I refused to pay him, not believing him to be entitled to the money.

Judge Hall (recalled). Was employed by a man named Dykes against Colonel Gibbs and Capt. Wright to restrain them by injunction from using Dykes' ground for burial purposes, and cutting timber on it. Dykes subsequently withdrew his bill voluntarily; I used my influence to have Dykes paid by the Confederate Government for any loss he might have sustained; the land in the immediate vicinity of Andersonville is a poor pine barren, except in its timber which could be sold to railroad companies for fuel or cross-ties. Wirz applied to me to prosecute some men who had been appropriating provisions and other things of that sort belonging to the prisoners. In August, 1864, saw Capt. Wirz; his appearance was that of a man just recovered from a spell of sickness; he was feeble and emaciated. Dogs, in Georgia, are used for tracking trifling felons, violators of the law, and runaway slaves, but by the laws of that State nobody could be pursued by vicious and savage dogs.

Georgia law made it a capital felony to harbor or entertain Federal prisoners.

Cross-examined. My sympathies had been with the rebellion; was a secessionist, and remained such until the close of the war; was active and did all I could for it; have not been acting as counsel for the accused; have, however, been asked questions about law, and answered them.

To *Mr. Baker.* Have not acted as counsel or adviser for Capt. Wirz, nor advised how the defense ought to be shaped.

W. D. Hammack. Was of the

rebel army; never saw any of our men shoot Federal prisoners; have seen them after they were shot; Capt. Wirz never, to my knowledge, promised furloughs for shooting prisoners; the order was that if the squads could not account for their men, they should be deprived of their rations; no order was issued to take from Stoneman's raiders any thing more than money, knives and forks, and such other articles as it was supposed they had stolen from the residents of the country through which they had passed; Confederate soldiers were punished like Union prisoners.

October 2.

W. D. Hammack. The Confederates could buy overcoats and other articles of the Union prisoners. On one occasion the paroled prisoners obtained a suit of clothes apiece from the supply of the United States sanitary goods received at Andersonville.

Cross-examined. Never saw Capt. Wirz beat any of the prisoners; had seen him take hold of men occasionally, and throw them into their places, speaking to them in a profane manner, he being of a violent temper; have smuggled onions, etc., into the stockade, selling them at a profit to the prisoners.

Vincent Bardo. Am an Italian; I am the man who blacked his face in order to make my escape; hoped, after having blacked my face, by mixing in with a gang of out-going negroes, to get away, but was caught and punished by twenty-five lashes, and being put in the chain-gang.

Mr. Baker. Captain, stand up.

Mr. Baker. Is this the man who ordered you to be whipped and put in the stocks?

Bardo. No, sir; that is not the man; I know that old Dutch captain; do not know who issued the order for my punishment.

October 3.

Joseph Thuringer. Was a prisoner at Tuscaloosa, Alabama. There were 500 prisoners there under charge of Wirz, who was at that time a sergeant.

To Mr. Schade. Am not acquainted with the character of Capt. Wirz for humanity and kindness.

October 4.

A. Moesner. After I was taken prisoner at Andersonville was paroled and sent to Capt. Wirz's office as clerk. Requisitions were made out every day; they stated the number of prisoners inside, and those on duty outside the stockade; the quantity of rations left was blank; the Commissary could see how many men were present, and he would then know the number of rations he had to furnish; every morning a list was made out of the number of rations each detachment had to get from the cook-house; carried that list to Duncan and left it with him; do not remember the rations being stopped for the entire camp; they were sometimes stopped in a squad when a man was reported missing; as soon as the Federal sergeant could answer for the man the rations were returned. Boxes from the North arrived three times.

There were 33,000 prisoners inside the stockade at one time; boxes were received in November and contained blankets and clothing; these were taken to the

storehouse near Capt. Wirz's office. All the paroled men, about 150, got a whole suit of clothes, excepting shoes; about 50 pairs of shoes were received and we gave them to those who were most in need of them; the other things were turned over to the hospital.

The boxes were searched to ascertain whether they contained liquors; Capt. Wirz gave Duncan some picks and shovels, that the prisoners could dig wells; he also gave Duncan orders to provide the prisoners with barrels to put in the wells to keep the dirt from falling in. There was a detail of 150 men to clean the camp. Wirz said if he had his way he would send the boy prisoners into the Union lines, as it was of no use to keep them prisoners of war, and that they would only get sick and die. Capt. Wirz ordered these boys to gather blackberries for the sick, which they did; understood that the nurses made pies out of them, and that the sick got none; Dr. White, as the small-pox was increasing, gave orders that the prisoners should be vaccinated. Capt. Wirz said to a man who refused to be vaccinated that he did not care if the latter should die, the order not having been given by himself. When a plot had been matured by the prisoners to escape, Capt. Wirz said he would abstain from shooting as long as he could. Capt. Wirz was sick in July, and also during August. Lieutenant Davis was in command. In September Wirz came back very sick. Never heard of anybody dying at Wirz's headquarters, nor of his having beaten or shot a man.

Cross-examined. I came from

Germany in 1862; applied to Capt. Wirz for clerical duty, stating in my letter that I was acquainted with about four languages; also stated I was a German from Frankfort-on-the-Main; the position of clerk was better outside than confinement inside the stockade. If, while serving as a clerk, Capt. Wirz had asked me to do anything inconsistent with my oath to the United States I would have refused it; served Capt. Wirz as far as that oath permitted. I received double rations, one of which I sold to Capt. Wirz for eighty cents Confederate money; Did not know what Wirz did with it. Wirz had the power to both issue and stop the rations to the prisoners.

George W. Fechnor. Was taken prisoner as a spy in Tennessee; made my escape, was recaptured in Mississippi and sent to Andersonville in June 1864. Acted as a prison sutler, and also as a magistrate; before me men were brought for stealing and were punished by flogging, being set to work and washed; a number of men were banded together and took by force what was not their own, such as watches, money, clothing, food and tin cups; a police force was organized called the regulators; when the latter called for and obtained assistance from Capt. Wirz; eleven of the raiders were arrested, six of whom were hanged and five placed in the chain gang.

There were five or six working shoemakers in the stockade, as many tailors and two watchmakers and the streets of the camp were filled with soup-jobbers, and at the roughly con-

structed tables could be bought ham and eggs, tea, coffee, etc.; there were 500 bakers in the stockade who baked and sold pies and cakes; there was plenty of flour, saleratus, etc.; had an establishment called the novelty store; had a greater variety than any other person in camp, and sold flour, hams, chickens, pepper, sorghum, beans, peas, etc., besides medicines.

There was a half million of greenback currency in camp; there were also in camp barbers' shops, clothiers, brokers engaged in buying paper money, checks and gold and silver; in one of the jeweler's shops saw fifty watches and breastpins and rings to be repaired; the owner of this shop kept a journeyman. There were fuel and lumber merchants also at the prison at Andersonville, and lots were purchased at reasonable rates within the stockade, on which shanties were erected. There were also gamblers there who had runners out to hunt up victims. Could not say men suffered from hunger; there were about a thousand dealers in various kinds of food and goods.

October 5.

George W. Fechnor (cross examined). Was living at Cincinnati, before I entered the service in the 2nd Kentucky infantry, in September, 1862; was captured the same month at New-castle, Ky.; was acting as second lieutenant; never received any pay or bounty from the government. There were only 20 men in my company and 124 in the whole regiment; we were surrounded by rebel guerrillas; fought one hour, but were final-

ly obliged to surrender; no one of my regiment was killed or wounded. Was arrested as a spy; they took from me a parole not to take up arms against the Confederacy while the rebels were in Kentucky.

Arrived at Andersonville June 1, 1864; had nothing with me but my clothes; started business by selling my daily rations of corn bread for ten cents; subsisted on the balance of the ration, which was bacon and a pint of raw beans. About 10th June purchased 16 dozen eggs at \$3.50 a dozen, on tick. Did not rob any one; always considered it consistent with honor to trade with any man. Generally gave a portion of the money made to my friends. When I left Andersonville, August 4, I had \$520 in greenbacks; at one time had \$5,000; purchased and sold flour, beans, peas, potatoes, apples, butter, onions, sorghum syrup, etc.; once purchased two barrels of sorghum; flour was \$70 a sack; purchased a sack each day and some day my sales were \$50 a sack. Onions were \$60 a sack; they were purchased of the post adjutant.

I never committed, nor was I ever charged with any crime; was never in the penitentiary. Did not take the oath to the rebel government or make promises to it; lied on entering the stockade at Andersonville, in claiming to be an officer. There were at Andersonville 50 wells and 450 springs, none of which yielded a bucketful at a time; the water was pure and clean; there were 500 bakers in the stockade, all of whom had bake-houses in the stockade. Andersonville was a city; there were half a dozen

real estate dealers in the stockade, who sold sites on the principal avenues and streets. Everybody in turn was a wood merchant; had seen thirty on the streets at a time.

The dealers sold ham and eggs, beefsteaks, honey, fruit, cakes, beer, etc.; any one could get a meal for \$10 in greenbacks, and be furnished with biscuits, tea or coffee, fried steak, onions and potatoes; a thimbleful of whiskey sold for \$3; have seen as many as twenty barber shops at one time; some of the barbers acted as doctors and had medicines for sale, also dyed the prisoners' whiskers. Have seen men cut their own throats and die; did not know the reason, except they were skin and bone and in a destitute condition.

The dealers could get out by paying the sergeant at the gate \$5. Used to make purchases at a house 5 miles distant of butter, eggs, honey, plums, apples and tobacco, to be sold to customers in the stockade. Used to sell medicine for the diarrhoea, a dollar and a half for a cupful. Also sold medicines for retail to the barbers. Sold the bread portion of my ration and ate the remainder.

MAJOR-GENERAL WALLACE. If clothing was so plentiful there, how was it so many men were ragged? Because they had no money to buy; saw men in the stockade without shoes, stockings and hats; about one-half of the men might be called ragged; one-fourth of the men there had among them \$500,000.

October 6.

Augustus Gleich. Was of the 8th Pennsylvania cavalry; was

taken as prisoner to Andersonville. Never heard nor saw Capt. Wirz shoot or injure a man.

Cross-examined. Was hostler of Capt. Wirz and obtained the place outside the stockade. Those outside obtained double rations; drew clothing twice. Knew Capt. Wirz was sick in August. Wirz would curse a man for nothing at all and would pull fellows along roughly.

Martin S. Harris. Was of the 5th New York cavalry; was a prisoner at Andersonville. Capt. Wirz ordered a sutler to leave the stockade for extortion, telling the boys to help themselves from the stock of goods, but reserving the potatoes and other vegetables for the sick. Never heard of Wirz shooting or maltreating prisoners; did not see him commit actual violence; had heard him "cuss" the men; the main avenue was lined with stores and trading places, while there were many itinerant venders of soap, candles, knives and other things; salt was sold by the bakers to the traders; it was thrown over the wall at night in bags; about the middle of October wrote a note to Capt. Wirz saying that owing to the way salt was disposed of, the prisoners could not obtain a sufficient supply, and requesting that some action be taken by him in the premises. Capt. Wirz issued an order prohibiting the sale of salt in the stockade, and confiscating the supply in traders' hands; after this there was a perceptible taste of salt in the bread.

Cross-examined. There were wells in the stockade, but those who bought or dug them kept

them for their own use; they would sell a cup of water for a chew of tobacco, which was sold, a piece two inches square and very thin, for twenty-five cents; the water in the creek was never fit to drink. About twenty out of the division of ninety under my charge died, ten of them in the stockade, principally with diarrhoea; six of the remainder were too sick to travel to Millen; saw men die for want of proper food, and not because of a lack of quantity; they could not eat the corn beef because their mouths were too sore with scurvy.

Mrs. Mary Rawson. Lived near Andersonville, and frequently carried food to a Union prisoner; Capt. Wirz had never refused or denied any privilege; he was always agreeable and willing I should bring anything there. Never heard of Capt. Wirz treating any lady in an unkind way. My prisoner, as I called him, was Peter Kean of the 16th Iowa.

Rev. E. R. Duncan. Am minister of the gospel. In August, 1864, preached to the Union prisoners in the stockade, having obtained a pass from Capt. Wirz to go in at will; visited Andersonville in the following February; stayed there a week each time. My mission proper was to preach to the Florida artillery.

Cross-examined. When my State (Tennessee) went out of the Union, I was identified with the act; went with my country. Am a man of one work, preaching to souls everywhere, and never thought that religion should be mixed up with politics.

October 12.

Mr. Schade read from the letter book of Capt. Wirz the following:

Hdqrs. Commander of Prisoners,
Camp Sumter, June 6, 1864.

Captain: I most respectfully call the attention of the colonel commanding the post, through you, to the following facts:

The bread which is issued to prisoners is of such an inferior quality, consisting of one-eighth husk, that it is almost unfit for use, and it is increasing the dysentery and other bowel complaints.

I would wish that the commissary of the post be notified to have the meal bolted, or some other contrivance arranged to sift the meal before issuing it. If the meal, such as is now used, was sifted, the bread rations would fall short fully one-quarter of a pound.

There is a great deficiency of buckets. Rations of rice, beans, vinegar and molasses cannot be issued to prisoners for want of buckets, at least eight thousand men being in the stockade without anything of the sort. If my information is correct, any number of buckets can be got from Columbus, Ga., if the quartermaster of the post would make the requisition for the same.

Hoping that you will give this your attention as soon as possible, I remain, Captain, most respectfully, your obedient servant,

H. Wirz,
Captain Commanding Prison.

Capt. A. D. Chapman, A. Adjutant of the Post.

Hdqrs. Commander of Prisons,

Camp Sumter, Feb. 26, 1865.

Sir: I have the honor to call your attention to the following facts:

There is at this post a large number of paroled prisoners of war, who are doing work for the Government, which if not done by them, would have to be done by impressment or hire, and thus be a heavy expense to the Government. These men are almost, without exception, barefooted, having been so long at work that what shoes they have are entirely worn out.

I wish to know if I cannot be authorized to make a requisition on the quartermaster's department to supply their wants in this line, or else buy the leather through the quartermaster, and have the shoes made, as there are plenty of shoemakers among the prisoners.

Recommending the statement to your favorable consideration, I am sir, very respectfully, your obedient servant,

H. Wirz,
Captain Commanding Prison.

To G. W. McPhail, A. D. C. and A. A. G.

Col. F. S. Ruffn. Was a lieutenant-colonel in the subsistence department of the Confederate army; there was a deficiency of commissary supplies, and from the beginning of the war more or less scarcity; would not say that any one was on the point of starvation, but there was much privation; 30,000 barrels of flour had accumulated at Richmond in the spring of 1864, but the whole of that reserve was consumed by the Union prisoners; the army of General Lee had to subsist on corn bread, the meal having to be brought mainly from Georgia; at Coal Harbor vegetables were so scarce that General Lee made an urgent application for them to the War Department; the men, for want of vegetables, were suffering from scurvy, diarrhoea, etc.; their recovery was necessary in order that they might return to the field; the commissary department then imported onions from the island of Bermuda through the blockade. Supplies were short throughout the entire South.

Cross-examined. Know nothing about the Andersonville prison, but the prisoners were removed from Richmond thither, because supplies were principally derived from Georgia. Did not know that any of the Confederate soldiers starved because of an insufficiency of food; had heard that some of them lost their lives because of its unwholesomeness.

R. H. Kellogg (recalled). Was a prisoner. Wirz had a character for cruelty and brutality and was profane and insulting to the prisoners; they were badly treated, and naturally supposed that

he was responsible for the abuses; Sherman's raiders who had been brought in were robbed of nearly everything they had; some had on merely shirts and pants; do not say that Captain Wirz did not kill or shoot any one, but that I did not see him do it.

Major S. B. French. Was an officer in the Confederate commissary. There was a deficiency of supplies in the winter of 1863 and spring of 1864. The rations in the army were reduced and vegetables were imported from Bermuda through the blockade. For five months preceding the evacuation of Richmond there was never ten days' supplies on hand for the army of Gen. Lee. Gen. Lee complained of the reduction of the rations.

Cross-examined. It was owing to the want of transportation facilities that corn was scarce in Richmond; we did not import wheat flour; knew nothing about Andersonville; the meal furnished to the army of Gen. Lee was not bolted.

To the COURT. Gen. Lee had bread every day, but several times the telegraph to Richmond stated that he was without meat; in such instances the people of Richmond would collect a supply; Gen. Lee informed me he had frequently been prevented from moving because of not having subsistence for his army.

Dr. G. G. Roy (recalled). Capt. Wirz was sick two-thirds, if not the whole of September; I had never dressed in the Andersonville hospital the wounds of a man who had been wounded with a pistol or revolver; told Capt. Wirz that he ought to have his right arm treated, but the cap-

tain though it would get well by his own treatment.

J. W. Armstrong. Reside in Macon, Ga.; was a captain in the commissary's office of the Confederate service. When I first went to Andersonville the rations issued to the Confederate soldiers and the Union prisoners were the same. Several boards of survey condemned the food there; Capt. Wirz had nothing to do with the commissary supplies, excepting to receive them; Wirz made a remonstrance against the quality of the food. Wirz was sick in July—how long, could not say—but he was out of his head. Knew nothing about Wirz being sick in August, as I left the post the first of that month; never heard of Capt. Wirz beating or shooting a prisoner so that he died; nor did I ever hear of a Confederate soldier obtaining a furlough for shooting a Union prisoner.

Cross-examined. Do not know whether the same rations I delivered at the post were supplied to the prisoners; had not so much difficulty in procuring subsistence as transportation; would not be familiar with the matter of issuing furloughs if it had been done.

Dr. John C. Bates (recalled). I might say that we had no medicines at the prison; the surgeons were not permitted to prescribe excepting by numbers, the remedies having been previously prepared from roots and berries and designated for various diseases; vaccine virus was a poison, even in the normal sys-

tem, and its insertion produced deleterious effects; such was the depraved condition of the system, owing to the filth, insufficient and unwholesome food and the absence of shelter, that the slightest abrasion of the skin produced gangrene. A prisoner accidentally struck his comrade with his elbow while they were lying together; by this the skin was abraded near the teeth; in three hours gangrene set in, and in three days the man died. The country around Andersonville was a poverty-stricken section, ten acres being required to produce a bale of cotton, and only four or five bushels of corn raised to an acre.

Cross-examined. Comparing the prisons at Macon and Andersonville, I give the preference to the latter, where I was confined, having been arrested in August, 1864; do not know for what I was arrested, and I was going to find out, but was discharged under a writ of habeas corpus issued at Petersburg while I was at Andersonville, if they would give me proper diet, room and cleanliness I would make no further requisitions for medicines; the vaccination took place prior to my being on duty at Andersonville. Looking at the peculiar susceptibility of the prisoners to disease, it became a serious matter with me whether I would have vaccinated them; if they took the smallpox it was certain death; but if I thought I could have saved even one in fifty I should have resorted to vaccination; in other words, only to save life.

October 13.

Mr. Schade read two letters from the letter-book of Captain Wirz. One of them letters, dated December, 1864, is addressed to Assistant

Quartermaster Neeley, and says that he (Wirz) had received eighteen packages of clothing for the Federal prisoners, including blankets, shoes, pants, sacks, shirts and that he would proceed to distribute them without delay.

The other letter, dated January 20, 1865, was addressed to Assistant Adjutant Thomas, asking that the guard to escort men gathering wood be increased from twenty-five to sixty men.

Benjamin F. Dilley. Was a prisoner at Andersonville; was admitted clerk in Capt. Wirz's office; my business was when prisoners arrived to make out the descriptive roll; was also a wardmaster, having charge of 150 men and 20 nurses; there was much trading in beans, pork, bacon, flour, meal, peanuts, sweet potatoes, cigars, tobacco, etc.; clothes were taken from the dead by our own men and sold to the rebels; never heard of the stocks being inside the stockade; Confederates as well as Yankees were forbidden to wash in the stream; Capt. Wirz made an ineffectual effort to impress 500 slaves for the purpose of enlarging the stockade, and our own men refused to work for fear of compromising themselves.

Capt. Wirz condemned rice and corn bread, remarking that he would not feed his negroes on them, and that the men who sent the corn meal to Andersonville should be court-martialed, as they were robbing their own government; Capt. Wirz was sick during August and off and on in July; never heard of Capt. Wirz shooting or beating prisoners so that they died; nor did I ever hear of furloughs being given to Confederate soldiers for shooting prisoners.

Cross-examined. Made application to Capt. Wirz to be detailed as a clerk, having been sick with diarrhoea; Wirz was a very

excitable, cross old fellow, and therefore I did not have much to do with him; in May I asked Dr. White to vaccinate me for the smallpox, but the doctor intimated that the matter was impure, and said he expected to procure good matter from the arm of a child in the country; the smallpox was prevailing in that month; capital for trading purposes was limited to the raiders; there were 500 of them who would knock down the prisoners and rob them of their money; after Wirz had packed the men thick in the stockade, some of them came out and helped to enlarge it; there was no difficulty in finding tools to build the fortifications, but there was a scarcity of them to improve the stockade; Wirz gave orders against the Confederate soldiers trading with our men for clothing, but do not know that persons were threatened for doing so as was intimated; Duncan and others committed the robbery of commissary goods; it was against the orders of Capt. Wirz to trade and therefore it was carried on secretly.

To the COURT. I made money by trading in greenbacks and Confederate money; started in business selling my overcoat for twenty-five dollars; bought greenbacks for three or five dollars inside, and sold them outside at from eight to ten dollars; also kept a sutler's store, and made money.

Capt. Wirz did not give me any extraordinary privileges more than he did to eight or ten other clerks; was allowed to go a mile in the country from the prison; trading was contrary to orders to make money, and I made it mostly from our own men; all suffered in the stockade for want of food; had seen men die in consequence.

I came away from Andersonville with \$140 in greenbacks and a \$45 watch; had seen Duncan speculating in stolen whisky and other things; Duncan knocked down and struck a couple of prisoners and would seize men in the middle of the night and place them in the stocks. Duncan and his right-hand man, Richey, reported the tunnels, and they would advise Wirz what should be done to men for such and such things; on two different occasions saw Dr. Mudd hold his thumb on an artery, and while the amputating operator was ty-

ing the artery, the doctor would remove his thumb and let the blood spurt in the operator's face and the doctor would laugh, as if it were something funny; Dr. Carr, a rebel steward, would come into the hospital disguised as one of our own men, sometimes in a good and at other times in a bad humor; saw him twice strike men over the face with his heavy pistol for talking with the guard; that doctor robbed a sick man of his buttons; vegetables were also stolen from the sick. Saw Duncan take the whisky; had heard Duncan advise Wirz to punish with bucking and the ball and chain the men who had spoken favorably of General Fremont and Old Abe.

F. W. Hille (called for the prosecution to impeach the testimony of George W. Fechnor).

Colonel Chipman. Did you know of Fechnor refusing to give dying men food?

Mr. Baker objected.

Colonel Chipman said that Fechnor, alias "Baron Munchausen," swore that he never saw any of the prisoners die, and that he never refused to give them food. He wanted to show that men died because of Fechnor, who refused to give them anything to eat, and also that Fechnor was a gambler and a rough generally.

Mr. Baker said that the fact that Fechnor did not assist the prisoners and was a gambler did not affect his credibility.

Hille. Fechnor, contrary to his own statements, was a gambler, and every one called him a mean man; he fleeced or cheated the prisoners out of their money; as an instance, a starving man craving for something to eat, was compelled to give a \$50 watch to Fechnor for \$2, for which sum Fechnor sold him six small cakes for 25c a piece and an ounce of butter; Fechnor had a board with numbers up to 9

upon it, where men gambled, and he was also in partnership with a sutler; Fechnor was the chief of the regulators, who, after the six raiders were hanged, robbed and stole more than the raiders themselves; so far from Fechnor giving food to hungry men, a man was lying near Fechnor's shanty, in a starving condition, and on having been appealed to that the man might be furnished with food, Fechnor remarked,

Let him die, I don't care. The man died.

Cross-examined. I live in Philadelphia, and was at Andersonville from June to September, 1864; was often in Fechnor's shop or shanty, which contained onions, tobacco, eggs, cheese, butter and many other things; Fechnor was known by that name and not as Ross; the sign on the shanty was Fechnor and Co.

October 14.

Edward Boate. Belonged to the 42nd New York; was pris-

oner both at Belle Isle and Andersonville; latter was better than the former; the prisoners carried with me from Belle Isle were sick, and some of them died on the way; the rations at Andersonville became smaller as the number of prisoners increased; the bread was bad, burned on the outside and raw within; the prisoners sometimes ate it and sometimes threw it away; the swamp was improved after I arrived there by ditching it; there was comfort and convenience, for the first time.

The COURT said both sides now rested. The rule permitted counsel for the defense to sum up in behalf of the prisoner, to be replied to by the Judge-Advocate, both to be in writing. The only thing which remained to be done was to fix the time for the hearing of the argument.

Mr. Baker said he must ask for two weeks' time to prepare his argument.

Colonel Chipman said he would want only twenty-four hours after the reading of the counsel's argument.

The COURT (after being cleared for deliberation), informed *Mr. Baker* they had decided to give him until next Tuesday week.^a

October 18.

THE PRISONER'S STATEMENT.

The Judge-Advocate. According to my promise to the court I have endeavored to go over this case in a thorough way, but to give the prisoner the benefit of a mind in no way colored against him, I selected *Mr. Hays*, one of the official reporters, to draw up the argument for the defense, and he will now read to the court the prisoner's statement drawn up by *Mr. Hays* on suggestions made by *Captain Wirz* and now submitted with the approval of the prisoner. It will now be read.

Captain Wirz. In this closing scene of a trial which must have wearied the patience of this honorable commission, and

^a *Mr. Baker* subsequently refused to argue the case for the prisoner and his statement was prepared for him by the *Judge-Advocate*.

which has all but exhausted the little vitality left me, I appear to put on record my answer to the charges on which I am arraigned, and to protest and vindicate my innocence. I know how hard it is for one, helpless and unfriended as I am, to contend against the prejudices produced by popular clamor and long-continued misrepresentation, but I have great faith in the power of truth, and I have much confidence in the intelligence and impartiality of the officers who are my judges. I am here to answer for all my official and personal acts at Andersonville, and if I can convince this court that they have been void of offense before God and man, I trust that I shall not be held responsible for the official or personal misdeeds of others. That is all I ask. By my own acts let me be judged, and if they have been such as to warrant my conviction on any one of the charges or specifications preferred against me, let me be visited with punishment commensurate with the offense. I do not ask mercy, but I demand justice; and I humbly pray that the God of justice will enlighten the minds and quicken the perceptions of those whose solemn duty it is to discriminate between the truth and falsehood of all that has been testified to in the case. I will leave to my counsel the presentation and argument of such points of law as they may deem of importance, and will myself endeavor to analyze the evidence, group together the main facts, and explain away all that may seem to weigh so heavily against me. In doing so I will strive to be simple and concise, and let me beg the court to believe that I will be, above all things, frank and truthful.

There are three distinct parts in which the prosecution and defense are necessarily comprised. These are: First. Had he, as charged, maliciously, willfully and traitorously combined, confederated and conspired with John H. Winder and others to injure the health and destroy the lives of soldiers in the military service of the United States? Second. And was he the person who was officially responsible for the privations and sufferings of the Federal prisoners at Andersonville? And, third, Had he committed the crime of murder, or perpetrated all or any of the atrocities laid to his charge?

As to the first, he said he was not conscious of a particle of testimony going to substantiate the charge of conspiracy. Of the one hundred and sixty witnesses who have testified, no one ever heard a syllable, or saw an act indicative of his knowledge of the existence of such a hellish plot; nor was there the least scrap of paper found in his office, or a word in the archives of the Confederacy to show that such a conspiracy existed. Even if all the specifications which are grouped under the charge of conspiracy were literally true, there is not a shadow of evidence that the suffering was the result of a conspiracy. The Government itself did not believe in the existence of the conspiracy, from the fact that the names of Robert E. Lee, James A. Seddon, Lucius Northrop and Dr. Moore, who were indicted with the accused when he was first arraigned, had been stricken out. If the charge was true now, it was true then; and if there was guilt anywhere, it certainly lay more deep and damning on the souls of those who held high positions than on him who was a mere subaltern officer. He believed that what the Judge-Advocate principally relied upon as proof of the conspiracy, was the expression attributed to him (Wirz) that "he was of more service to the Confederate Government than any regiment in the front," connected with the equally wicked and significant expressions attributed to General Winder, General Cobb and Captain W. S. Winder. As to the remark attributed to himself, he would refer to that in another part of the defense. General Winder has gone to the great judgment seat. Howell Cobb was not allowed to come here and have an opportunity of contradicting the testimony referring to him. The Judge-Advocate thus virtually admitted what it was expected to prove by him. As to W. S. Winder, he was under the jurisdiction of the United States Government. Surely he could not be held to answer for their rash and impudent expressions. Furthermore, if he, as a subaltern officer, simply obeyed the legal orders of his superiors in the discharge of his official duties, he could not be held responsible for the motive that dictated such orders. And if he overstepped them and violated the laws of war, and outraged hu-

manity, he should be tried and punished according to the measure of his offense.

From his position at Andersonville, he should not be held responsible for the crowded condition of the stockade, the unwholesome food, etc., for the following reasons, among others, viz.: he was not responsible for the selection of the location, as it was located by W. S. Winder in 1863, while he was yet in Europe; that he did not assume command until March, 1864; that Colonel Persons, one of the principal witnesses for the prosecution, testified that the stockade was sufficiently large and properly located for the accommodation of ten thousand prisoners; that Colonel Persons' testimony fully exonerated him (Wirz) from complicity in the selection of the location, overcrowding the stockade, or failure to provide proper shelter for the prisoners; that Dr. Bates exonerated him from all blame on account of the condition of things in the hospital, and that his testimony was corroborated by Dr. Roy, and that Colonel D. T. Chandler, in his report to Richmond, never once attached blame to Wirz for the condition of affairs at Andersonville.

As to the third charge, that of murder, he hoped to be able to show the court that he was not guilty, and that he was not the monster he had been depicted; but that on the contrary, he did what little lay in his power to diminish or alleviate the miseries of the prisoners. The specifications accused him of no less than thirteen distinct crimes of the grade of murder; yet in no instance were the name, date, regiment or circumstances stated in the specifications, and in the whole mass of the testimony, there were but two cases of this character that could be fixed with any definiteness; and in these two cases he was prepared to make his defense. The two referred to were the actual, real case of "Chickamauga," and the mythical case described by the name of "William Stewart," who, it is alleged, was shot at the gate near the guard-house.

With regard to Chickamauga, he would make the following correct statement: On the evening referred to, an officer went to his (Wirz's) headquarters, and said there was a man

in the dead line jawing the guard and creating a great deal of excitement. He rode to the stockade, dismounted, and went inside and asked Chickamauga in a rough way, "What in the hell he was doing there?" Chickamauga replied that "he wanted to be killed." He (Wirz) replied that "If that was all he wanted, he would soon have it." He then drew his revolver to menace Chickamauga, and the latter became frightened and went outside the dead-line. Wirz then ordered the guard to fire upon the cripple if he again approached the dead-line. He never supposed that Chickamauga's friends would allow him again to go near the forbidden line. Wirz then went out of the stockade, and was on his way to his quarters when he heard the report of a musket, and going back and mounting the sentry-box, he found that Chickamauga had been shot. He was shot for a violation of a rule of prison discipline; a rule absolutely necessary at Andersonville, and one not unusual, for it was enforced in nearly all the military prisons in the South; besides, the rules were printed and posted in conspicuous places.

With regard to the other alleged case of shooting, it differed from that of Chickamauga in that the alleged victim, "William Stewart," had the good fortune never to have been at the Andersonville stockade. The man could not be found on the books of the prison, the hospital record, or the death register. As this testimony came from a man named Gray, who had prevaricated overmuch, his statement was not entitled to the least credence.

So as to the evidence of Alcock, who testified to having been robbed, and to Wirz ordering men to be bayoneted on the occasion of their removal for exchange. The testimony of Colonel Fanning shows that he had nothing to do with the employment of the dogs.

The allegation that furloughs were granted to soldiers for shooting prisoners was pronounced an absurd camp rumor. He denies that the prisoners were ever deprived of rations as a punishment.

On only one occasion was the whole camp deprived of ra-

tions, and that was on the 4th of July, when there was a difficulty with the raiders, and the quartermaster could not distribute the rations. He denies the exercise of personal violence toward the prisoners. His physical condition was such that he could not have knocked a man down, and he quotes from the testimony of Father Whalen, Dr. Roy and others who had opportunities of observation, to show that such a thing never occurred as his beating or shooting a prisoner.

He quoted from Colonel Chandler's report to show that when the prisoners were inquired of as to their treatment, they never once mentioned his (Wirz's) name. He acknowledges that two of the prisoners were whipped, viz.: Bardo, for disguising himself as a negro (but not by Wirz's order, as appears by Bardo's own acknowledgment), and the negro Hawkins, for offering a gross insult to a white lady. He denies having used the expression that he was doing more for the Confederacy than any regiment at the front. The remark made was that he had a larger command than any general in the field, and this was tortured into the remark first above mentioned. The remark at the graveyard that "the Yankees were getting the land they came for," was actually made, but not by him (Wirz), but by another officer who was present.

And here I will close with one or two final remarks. The court will observe that in this statement I have studiously avoided any deviation from the strict, legitimate path of my defense. I have not said a word to bring discredit upon any officer of the late Confederate or of the Federal Government. I have not attempted to complicate the case with any allusions as to where the responsibility rested for non-exchange of prisoners of war.

Closely connected as that question is with the general subject, it has nothing to do with the subject of my guilt or innocence. If I were rash or imprudent enough to touch that question it might be imputed to me as an acknowledgment of the weakness of my case. I want all the sympathy, good feeling and confidence of this court too much to say or do anything that might give offense. It is composed of brave, hon-

orable and enlightened officers, who have the ability, I am sure, to distinguish the real from the fictitious in this case, the honesty to rise above popular clamor and public misrepresentations, and who have names and reputations to transmit to history, and to leave unimpaired to their descendants. I cannot believe that they will either darken their intellect or prostitute their independence for the sake of crushing out the last faint embers of a life that is just ebbing out. I cannot believe that they will consent to let the present and future generations say of them that they stepped down from their high positions, at the bidding of power, or at the more reckless dictate of ignorant, widespread prejudice, to consign to a felon's doom a poor subaltern officer, who, in a difficult post, sought to do his duty and did it. The statement, which I now close, will probably survive me and you alike. It will stand as a complete answer to all the mass of misrepresentation heaped upon me. May God so direct and enlighten you in your deliberations that your reputation for impartiality and justice may be upheld, my character vindicated, and the few days of my natural life spared to my helpless family.

THE JUDGE ADVOCATE'S ARGUMENT.

October 20.

Colonel Chipman. May it please the Court: Deeply sensible of the importance and solemnity with which you have clothed this trial, and quickened, as I know you are, to a high sense of duty by the obligation you have taken to "well and truly try and determine, according to the evidence, the matter now before you between the United States of America and the prisoner to be tried, and to duly administer justice according to your conscience, the best of your understanding, and the custom of war," no word of mine is needed to increase the impressiveness of this occasion.

In many of its aspects and bearings this trial presents features more startling, more extraordinary, and more momentous than are found in the whole annals of jurispru-

dence. The charges and specifications here laid accuse this prisoner and other persons, named and unnamed, with having "maliciously, traitorously, and in violation of the laws of war, conspired to impair and injure the health, and to destroy the lives, by subjecting to torture and great suffering, by confining in unhealthy and unwholesome quarters, by exposing to the inclemency of winter, to the dews and burning sun of summer, by compelling the use of impure water, and by furnishing insufficient and unwholesome food, of large numbers of soldiers in the military service of the United States, held as prisoners of war at Andersonville, Georgia, by the so-called Confederate States of America, to the end that the armies of the United States might be weakened and impaired, and the insurgents engaged in armed rebellion against the United States might be aided and comforted." I invoke, gentlemen, your calm deliberation, your most dispassionate and humane judgment, while I unfold the proofs of guilt.

In a field so broad, presenting so many issues and involving so many persons, it has been a question of grave thought with me how to present the argument in this case, my desire being only to give to the Court a perspicuous and faithful analysis of the testimony, nothing extenuating, and setting down naught in malice.

With this view, I have thought it best to notice, 1st. Such legal objections as have been made to the Commission as a judicial tribunal, and such other objections as may be deemed worthy of notice touching the manner in which the case has been been tried. 2nd. To present a truthful analysis of the testimony, without regard to the responsibilities of the parties, for the purpose of ascertaining, as nearly as language can portray them, the horrors of Andersonville, that we may be prepared to appreciate fully the fearful responsibility of those inculpated by the evidence. 3rd. To examine charge first, alleging conspiracy; in this connection showing the extent of the conspiracy, its purposes, and the criminality of each of the conspirators; and, 4th. To show

the guilt of the prisoner at the bar under charge second, alleging murder in violation of the laws of war.

If this be true, the subject may be disposed of in the examination of the following questions: 1st. Has the President of the United States the constitutional power to convene a Military Commission for the trial of military offenses committed in time of war? 2nd. Is the case triable by a Military Commission?¹⁸

Having thus disposed of the question of jurisdiction, I ask indulgence a moment to notice some of the objections which have been made by the counsel for this prisoner during the progress of the trial.

I am not prepared to believe that this court would stultify itself by declaring that their action, after argument pro and con as to admissibility of evidence, overruling of motions or pleas, or sustaining the same was wrong, and that they now desire to correct it; however, as the conduct of the case has been somewhat criticised, and as the counsel who declined to argue the defense intimated that a large part of his address would have been directed to those objections, and has asked that they be not wholly overlooked, I think it not entirely out of place to review at this time very briefly the points of objection. It has been frequently asserted in court by counsel that the whole power of the government was concentrated upon the prosecution of this prisoner, and that he, single-handed and without the aid of the government, has been conducting his defense. It is well known that witnesses for the defense receive a per diem and their actual expenses in coming to the court and returning to their homes. The record of this court will show that every subpoena asked for has been given except in the cases of a few rebel functionaries, who, for reasons stated at the time, were not subpoenaed. Of this, however, there should be no complaint, as the facts which those witnesses were expected

¹⁸ The Judge Advocate made a lengthy argument on this question, which had also been raised and settled in the trial of the Lincoln Conspirators, ante, p. 495.

to establish were shown by other witnesses, and as a proposition was made by the judge advocate to admit that those witnesses thus excluded would testify here to the same facts—a proposition which was declined by the counsel. The records of this court will also show that there have been one hundred and six witnesses subpoenaed for the defense, of whom sixty-eight reported. Of these, thirty-nine, many of them soldiers of our army and sufferers at Andersonville, were discharged without being put upon the stand, the counsel, for reasons only known to himself, declining to call them. Besides this, the government has, without a precedent, furnished, at great expense, to the prisoner a copy of the record from day to day during the progress of the trial. The government has also given his counsel the benefit of its clerical force, and, in short, shown the prisoner indulgences which should forever close the mouth of one whose treatment of its soldiers was in such striking contrast that he must have felt the more deeply his guilt.

Again, it has been frequently complained of during the trial that the Court has excluded the declarations of the prisoner made in his own behalf, and has refused to allow him, in other instances, to show what he did. I think the Court will remember that in every case the whole of any particular transaction has been given for and against the prisoner, and that the *res gestæ*, properly so called, has never been excluded. All the prison records in the possession of the government which could throw any light upon the case are in evidence.

The prisoner has been allowed to show acts of kindness wherever they could with any legal propriety be given, as, for instance, the taking of drummer-boys out of the stockade because of their youth; the allowing Miss Rawson to administer to the wants of one soldier; the giving of passes to ministers of the Gospel to enter the stockade; his letters and reports with reference to the wants of the prison; his kindness to the prisoners whom he detailed for duty outside the stockade, and many other things, all of which we shall

show hereafter, are not incompatible with the idea of his guilt. But, even admitting more than is claimed or proved for the prisoner in regard to his urging Winder and the rebel authorities to do certain things, the law is clear that if a party remain in a conspiracy, though protesting against it, and seeking to escape from it, or if he continue in an unlawful enterprise, insisting that he does not mean to do harm, yet, if harm results, or serious and criminal consequences follow, he is nevertheless responsible. If, in the course of one year's pursuit of an illegal business, a stupendous crime indeed, the perpetrators could show less than this prisoner has shown in his favor, he would not be entitled to the human name.

It would be strange, indeed, if this record of five thousand pages, of thirty-eight days of weary, laborious trial, presented no wrong rulings, no improper exclusion or admission of evidence in a greater or less degree pertinent to some issue made; but I assert with all confidence, and with honest belief, that the interests of this prisoner have not been and cannot be affected injuriously by such action in any instance that can be named.

It must not be forgotten, and to this I call the special attention of the counsel and of the Court, that nowhere in this record can there be found the exclusion of a scintilla of evidence bearing on the defense to the charge of murder, and to which this prisoner is more especially called to answer. There is another fact to which I would also call the attention of the counsel and the Court, and it is this: that if, after a careful examination of the evidence, there be sufficient legal proof legally spread upon the record, you must proceed with your finding without regard to any illegal evidence, and not, as the counsel would insist, declare the whole record vitiated. This is sustained by reason and by law, wherever it comes up to the true standard, which, after all, is but the perfection of human reason. The only instances in which appellate courts remand cases for new trial is where, from the bill of exceptions presented, they cannot determine whether the

jury were or were not misled by the evidence improperly admitted; but where they find that the errors complained of were not material, or where the verdict is sustained after disregarding the errors, no court will subject the parties to a second trial, or interpose to save the complainant.

Out of place as this may be in the order of my argument, I have deemed it just to say thus much.

3d. We come now to notice the evidence spread upon the record with regard to the sufferings of Union prisoners at Andersonville.

Character of Testimony.

It is argued that the evidence presenting the horrors of Andersonville is not of that class which is entirely reliable; that those who were in the rebellion have been brought here forcibly by the government, and made to testify in anticipation of reward by pardon, or through fear of being themselves punished; and that the evidence of soldiers who were sufferers at Andersonville was highly colored, testifying as they did under a sense of the injuries inflicted upon them while prisoners, and warmed to enthusiasm in the enumeration of their wrongs.

I need only to say in reply that the careful observer of this trial must have discovered how utterly powerless has been the language of witnesses to describe the real condition of affairs at Andersonville; that where science has spoken through her devotees, where inspectors have tried to convey a correct idea, where the artist has sought to delineate, or the photographer to call the elements to witness, they have all uniformly declared that, with all these appliances, nothing has presented in their true light the horrors of that place. The evidence before you is of the highest character. It consists of many kinds, from many directions: from persons speaking in the interest and for the good of the rebel government; from persons under a strong sense of the wrongs done these miserable wretches; from disinterested observers neither in the one nor in the other army; and from

the injured themselves. And yet there is a most striking concurrence in all this testimony, all agreeing that history has never presented a scene of such gigantic human suffering. If I can succeed in presenting to your mind a faithful picture of Andersonville as it was, or make such an analysis and grouping of the testimony as to show to the civilized world, in a tithe of its horrors, the suffering endured, I shall have accomplished all I can hope, and shall have done more than I fear I am able to do.

The Stockade.

The stockade at Andersonville was originally built, as we learn from many sources, with a capacity for ten thousand, its area being about eighteen acres. It continued without enlargement until the month of June, 1864, when it was increased about one-third, its area then, as shown by actual survey, being twenty-three and a half acres. The prison, as described by Dr. Joseph Jones, a surgeon of the rebel army, in his official report to the surgeon general, consisted of a strong stockade in the form of a parallelogram, twenty feet in height, formed of strong pine logs firmly planted in the ground, with two smaller surrounding stockades, one sixteen and the other twelve feet high, these latter being, as he says:

"intended for offense and defense. If the inner stockade should at any time be forced by the prisoners, the second forms another line of defense; while, in case of an attempt to deliver the prisoners by a force operating upon the exterior, the outer line forms an admirable protection to the Confederate troops, and a most formidable obstacle to cavalry or infantry."

To show more clearly the strength of this stockade, I quote again from Dr. Jones' Report:

"The four angles of the outer line are strengthened by earthworks upon commanding eminences from which the cannon, in case of an outbreak among the prisoners, may sweep the entire inclosure."

On the outside of the inner stockade were erected thirty-five sentry-boxes or watch-houses overlooking the area

within, which were so constructed as to protect the sentries from the sun and rain. From Colonel Chandler's Inspection Report, dated August 5, 1864, I quote the following:

"A railing around the inside of the stockade, and about twenty feet from it, constitutes the 'dead line,' beyond which prisoners are not allowed to pass. A small stream passes from west to east through the inclosure, about one hundred and fifty yards from its southern limit, and furnishes the only water for washing accessible to the prisoners. Bordering this stream, about three-quarters of an acre in the center of the inclosure is so marshy as to be at present unfit for occupation, reducing the available area to about twenty-three and a half acres, which gives somewhat less than six square feet to each prisoner, and even this is being constantly reduced by the additions to their numbers."

From the beginning to the close, the only shelter in the prison was such as the ingenuity of the prisoners could devise, all the standing timber and undergrowth having been cut away; and, with the exception of a small shed, covered but not inclosed, stretching across a portion of the north end of the stockade, nothing whatever existed to protect the prisoners from the inclemency of the weather or the intolerable heat of that climate.

The prison was entered by two gates, called the north and south gates; the first situated a short distance north of the bakery, the other a short distance from the southwest corner, and on the west side.

The Cook-House.

Immediately above the stockade, and on the stream passing through it, was situated an immense cook-house, at which all the rations provided for the prisoners, if cooked at all, were prepared. The drainage and offal of this bakery passed immediately into the stream running through the prison. Still above, and on the same stream, were located, at distances varying from five hundred yards to half a mile, several rebel encampments. These washed into the stream, and their sinks were located on it.

The Hospital.

The hospital, which was erected some time in June, 1864, prior to which time the sick were treated under the shed already referred to inside the stockade, was a stockade inclosure similar to the prison, situated on the south side of the prison, about four hundred yards from the southeast corner, and containing five and a half acres. A stream of water passing through its southeast corner emptied itself into the stream crossing the stockade a few yards from the east side of the stockade. Within this inclosure were erected for hospital buildings long sheds constructed of poles, with roofs made of pine boughs, and in some instances of planks, without any siding or other protection. In some cases wall and fly tents, much worn and in very bad condition, were used. This constituted the shelter furnished the sick.

The Dead-House.

The dead-house was a building similar to one of the hospital sheds, except that it was partially inclosed by boards and puncheons nailed on its sides. To this place the dead were conveyed upon litters, blankets, stretchers, and by such other means as the prisoners could devise, and were conveyed thence in army wagons, about twenty-five in each load, piled up "like cord-wood," or "as a Western farmer hauls his rails," as one of the witnesses told you, to the burying-ground, which was situated a few hundred yards northwest of the stockade.

Condition of the Stockade.

Having thus given an outline of the stockade, the hospital, and their surroundings, let us inquire into the condition of each of these places, taking first the stockade. It will be remembered that the testimony is drawn from many sources. I present,

1st. The opinions of medical officers in the service of the rebel government on duty at Andersonville and elsewhere

at the time these sufferings are alleged to have been endured.

2nd. The opinions of rebel officers assigned to the special duty of investigating the condition of affairs at Andersonville, together with the records of the prison.

3rd. The opinions and observations of officers and soldiers of the rebel army on duty at Andersonville.

4th. The observations of persons residing in the vicinity during this period, and who paid frequent visits to Andersonville; and,

5th. The testimony of the prisoners themselves.

I shall endeavor to present the subject in the order above mentioned.

Testimony of Medical Officers.

Among the earlier official inspections given to this prison was that of Surgeon E. J. Eldridge, who made a report pursuant to instructions of Major General Howell Cobb, and which accompanied the report of that general made upon the same subject to the adjutant general of the rebel government for the information of the War Department, and which reached that department May 21, 1864. He says:

"I found the prisoners, in my opinion, too much crowded for the promotion or for the continuance of their health, particularly during the approaching summer months. The construction of properly-arranged barracks would, of course, allow the same number of men to occupy the inclosure with material advantage to their comfort and health. At present their shelter consists of such as they can make of the boughs of trees and poles covered with dirt. The few tents they have are occupied as a hospital. . . . I found the condition of a large number of the Belle Island prisoners on their arrival to be such as to require more attention to their diet and cleanliness than the actual administration of medicine, very many of them suffering from chronic diarrhoea, combined with scorbutic disposition, with extreme emaciation as the consequence. The hospital being within the inclosure, it has been found impracticable to administer such diet and give them such attention as they require, as, unless constantly watched, such diet as is prepared for them is stolen and eaten by the other prisoners."

He then proceeds to urge upon the authorities in Richmond the necessity of removing the hospital. On this point he says:

"I consider the establishment of a hospital outside of the present inclosure as essential to the proper treatment of the sick, and most urgently recommend its immediate construction."

And to meet an objection which he says was made at Richmond to do this, because additional guards would be required, he says:

"Nurses could be detailed with such discretion that but few would attempt to escape, and, with frequent rollealls, they would not be absent but a few hours before detected, and would be readily caught by the dogs, always at hand for that purpose."

Up to this time no baking for the prisoners existed, their rations being issued to them raw, as will appear from the following paragraph in the report:

"The bakery just being completed will be a means of furnishing better prepared food, particularly bread, the half-cooked condition of which has doubtless contributed to the continuance of the bowel affections."

The mean strength of prisoners at the date of this report, as shown by the journal kept by the prisoner, was about fourteen thousand.

Thus we see that the sufferings at Andersonville were anticipated as early as May, and the rebel government duly warned. Of that question, however, hereafter.

Without pretending to analyze the evidence of each particular medical gentleman who has testified upon this subject, as they all concur in the general facts in relation to the condition of the stockade, I select the report of one of the most intelligent of their number, quoting him somewhat fully. The gentleman who speaks through the report I am about to give is Dr. Joseph Jones, Professor of Chemistry in the Medical College of Georgia, a graduate of the University of Pennsylvania, and a man of eminence in his profession. He went to Andersonville under the direction of the surgeon general of the Confederacy, pursuant to an order dated Richmond, Virginia, August 6, 1864, in which the surgeon general uses the following language:

"The field of pathological investigation afforded by the large collection of Federal prisoners in Georgia is of great extent and

importance, and it is believed that results of value to the profession may be obtained by a careful investigation of the effects of disease upon the large body of men subjected to a decided change of climate and the circumstances peculiar to prison life."

From this it will be seen there was authority from a high source for his proceedings, certifying a knowledge of the condition of things at Andersonville, in the surgeon general's office, if it does not especially commend the humanity of that office.

After making some remarks in regard to the character of the soil, the internal structure of the hills, and so forth, Dr. Jones proceeds to give a table illustrating the mean strength of prisoners confined in the stockade from its organization, February 24, 1864, to September, 1864.

This computation, I may remark, is only approximately accurate, and is arrived at by adding together the number of prisoners at the first, middle, and the last of each month, and dividing the result by three. His table, however, shows the following as the mean result:

March	7,500	June	22,291
April	10,000	July	29,030
May	15,000	August	32,899

He says:

"Within the circumscribed area of the stockade the Federal prisoners were compelled to perform all the offices of life, cooking, washing, urinating, defecation, exercise, and sleeping. . . . The Federal prisoners were gathered from all parts of the Confederate States east of the Mississippi, and crowded in the confined space, until, in the month of June, the average number of square feet of ground to each prisoner was only 33.2, or less than four square yards. These figures represent the condition of the stockade in a better light even than it really was, for a considerable breadth of land along the stream flowing from west to east, between the hills, was low and boggy, and was covered with the excrement of the men, and thus rendered wholly uninhabitable, and, in fact, useless for every purpose except that of defecation."

It will be remembered that besides this swamp must be excluded the space between the dead line and the stockade, which, together with the bog, must be taken from the whole

area. Colonel Chandler, in his official report, makes a computation showing that the actual space allowed to each prisoner was only six square feet, there being scarcely room for the prisoners all to lie down at the same time. Dr. Jones' report continues :

"With their characteristic industry and ingenuity, the Federals constructed for themselves small huts and caves, and attempted to shield themselves from the rain, and sun, and night-damps, and dew. But few tents were distributed to the prisoners, and those were in most cases torn and rotten. In the location and arrangement of these tents and huts no order appears to have been followed; in fact, regular streets appeared to be out of the question in so crowded an area, especially, too, as large bodies of prisoners were from time to time added suddenly, without any previous preparation. . . . The police and internal economy of the prison was left almost entirely in the hands of the prisoners themselves, the duties of the Confederate soldiers acting as guards being limited to the occupation of the boxes or look-outs arranged around the stockade at regular intervals, and to the manning of the batteries at the angles of the prison. Even judicial matters pertaining to themselves, as the detection and punishment of such crimes as theft and murder, appear to have been in a great measure abandoned to the prisoners. A striking instance of this occurred in the month of July, when the Federal prisoners within the stockade tried, condemned, and hanged six of their own number who had been convicted of cheating, and of robbing and murdering their fellow-prisoners. They were all hung upon the same day, and thousands of prisoners gathered around to witness the execution. The Confederate authorities are said not to have interfered with these proceedings. In this collection of men from all parts of the world, every phase of human character was represented. The stronger preyed upon the weaker, and even the sick, who were unable to defend themselves, were robbed of their scanty supplies of food and clothing. Dark stories were afloat of men, both sick and well, who were murdered at night, strangled to death by their comrades for scant supplies of money and clothing. I heard a sick and wounded Federal prisoner accuse his nurse—a fellow-prisoner of the United States Army—of having stealthily, during his sleep, inoculated his wounded arm with gangrene, that he might destroy his life, and fall heir to his clothing.

"The large number of men confined within the stockade soon, under a defective system of police and with imperfect arrangements, covered the surface of the low grounds with excrement. The sinks over the lower portions of the stream were imperfect in their plan and structure, and the excrement was in large measure deposited so near the borders of the stream as not to be washed away, or else accumulated upon the low boggy ground. The volume of water was not sufficient to wash away the faeces,

and they accumulated in such quantities in the lower portion of the stream as to form a mass of liquid excrement.

"Heavy rains caused the waters of the stream to rise, and, as the arrangements for the passage of the increased amounts of water out of the stockade were insufficient, the liquid faeces overflowed the low grounds, and covered them several inches after the subsidence of the waters.

"The action of the sun upon this putrefying mass of excrement, and fragments of bread, and meat, and bones, excited most rapid fermentation, and developed a horrible stench. Improvements were projected for the removal of the filth and for the prevention of its accumulation, but they were only partially and imperfectly carried out.

"As the forces of the prisoners were reduced by confinement, want of exercise, improper diet, and by scurvy, diarrhoea, and dysentery, they were unable to evacuate their bowels within the stream or along its banks, and the excrement was deposited at the very doors of their tents.

"The vast majority appeared to lose all repulsion to filth, and both sick and well disregarded all the laws of hygiene and personal cleanliness.

"The accommodations of the sick were imperfect and insufficient. Each day the dead from the stockade were carried out by their fellow-prisoners, and deposited upon the ground under a bush arbor, just outside of the southwestern gate. From thence they were carried in carts to the burying-ground, one-quarter of a mile northwest of the prison. The dead were buried without coffins, side by side, in trenches four feet deep.

"The low grounds bordering the stream were covered with human excrement and filth of all kinds, which in many cases appeared to be alive with working maggots.

"An indescribable sickening stench arose from the fermenting mass of human dung and filth.

"There were nearly five thousand seriously-ill Federals in the stockade and Confederate States Military Prison Hospital, and the deaths exceeded one hundred per day; and large numbers of the prisoners, who were walking about, and who had not been entered upon the sick report, were suffering from severe and incurable diarrhoea, dysentery, and scurvy. . . . I visited two thousand sick within the stockade, lying under some log sheds which they had built at the northern portion for themselves. At this time only one medical officer was in attendance, whereas at least twenty medical officers should have been employed."

By comparing two very interesting tables of statistics given in this connection by Dr. Jones, it will be observed that, although the number of sick in the stockade was the same as that in the hospital, while the number of surgeons in

attendance in the stockade was greatly below that in the hospital, the deaths occurring were about the same in each; or, in other words, the prisoners died as rapidly with treatment as without it. This is confirmed by the opinions of several surgeons, among them Dr. Roy, Flewellen, Head, Rice, and others, who have stated that medicines were of little use, and that more could have been done by dieting.

Again Dr. Jones says:

"Scurvy, diarrhoea, dysentery, and hospital gangrene were the prevailing diseases. I was surprised to find but few cases of malarial fever, and no well-marked cases of typhus or typhoid fever. The absence of the different forms of malarial fever may be accounted for in the supposition that the artificial atmosphere of the stockade, crowded densely with human beings and loaded with animal exhalations, was unfavorable to the existence and action of the malarial poison. The absence of typhoid and typhus fevers among all the causes which are supposed to generate these diseases appeared to be due to the fact that the great majority of these prisoners had been in captivity in Virginia, at Belle Island, and in other parts of the Confederacy, for months, and even as long as two years, and during this time they had been subjected to the same bad influences, and those who had not had these fevers before either had them during their confinement in Confederate prisons, or else their systems, from long exposure, were proof against their action."

A most striking fact is here presented, which illustrates, perhaps, in as strong a light as is possible, the terrible condition of our prisoners. The report shows that, in a region of country favorable to malarial fevers, persons lying in the open air, on the border of a swamp, without shelter, drinking unwholesome water—in short, with every surrounding conducive to malaria, still the poison of that atmosphere, made so by peculiar circumstances, overcame all those influences, and rendered the place comparatively free from fevers of a malarial nature.

After describing at some length the effects of scurvy and hospital gangrene, the report proceeds:

"The long use of salt meat, oftentimes imperfectly cured, as well as the almost total deprivation of vegetables and fruit, appeared to be the chief causes of the scurvy.

"I carefully examined the bakery and the bread furnished the

prisoners, and found that they were supplied almost entirely with corn-bread from which the husk had not been separated. This husk acted as an irritant to the alimentary canal, without adding any nutriment to the bread."

After speaking of the sheds used for the sick in the stockade, which were open on all sides, he says:

"The sick lay upon the bare boards, or upon such ragged blankets as they possessed, without, as far as I observed, any bedding or even straw. Pits for the reception of faeces were dug within a few feet of the lower floor, and they were almost never unoccupied by those suffering with diarrhoea. The haggard, distressed countenances of these miserable, complaining, dejected living skeletons, crying for medical aid and food, . . . and the ghastly corpses, with their glazed eyeballs staring up into vacant space, with the flies swarming down their open and grinning mouths and over their ragged clothes, infected with numerous lice, as they lay among the sick and dying, formed a picture of helpless, hopeless misery which it would be impossible to portray by words or by the brush."

It would hardly seem necessary, if indeed it were possible, to add coloring to the picture here drawn. I cannot refrain, however, from noticing farther the condition of these prisoners, as we learn it from the same class of testimony. Dr. Amos Thornburg, a rebel surgeon on duty at Andersonville from the 14th of April until the prison was finally broken up, fully confirms every thing said by Dr. Jones. After speaking of the terrible mortality among the prisoners, and in reply to the question "To what do you attribute it?" he says:

"I attribute it to the want of proper diet; the crowding together of too many men in the prison and in the hospital; the lack of shelter and fuel, and consequent exposure. While I prescribed at the stockade, after the hospital was moved outside, the number of sick who could not be admitted into the hospital became so great that we were compelled to practice by formulas for different diseases, numbering so that, instead of a prescription, a patient was told to use No. —."

Manifestly improper as this method of treating diseases must appear to every one, it did not escape the criticism of the more conscientious even of those at Andersonville. Dr.

Head, persisting in giving a prescription in each case, as he thought his duty as a conscientious physician required, and not willing to accept a number prepared for all stages of any one disease, was told, on asking why he could not be permitted to pursue the safe course,

"That he was not to practice in that way; that he had to practice according to the formulas and numbers that they had."

In reply to the question, "Why did you object to it?" he says:

"Because I could not prescribe properly for my patients, I looked upon it as utter quackery; any body, whether he had ever read medicine or not, could practice according to the formulas. It was often doubtful whether a prescription would suit a case in its present condition. The doctors, however, had to take that or nothing."

Dr. G. L. B. Rice, another surgeon on duty there, speaking on the same point, says:

"I commenced prescribing as I had been in the habit of doing at home, but was informed that I would not be allowed to do that. I was handed a lot of formulas and numbers from one up to a certain point, and we had to use those. My opinion was that we could do very little good with that kind of prescription. It was very unsafe practice. I know nothing about the ingredients in them, and had no means of knowing it; I made complaints, but the chief surgeon would not allow a change."

The testimony of Dr. Thornburg, and other surgeons who prescribed at the stockade, shows that after the hospital was moved outside, patients were not treated in the stockade at all, but only those who were able to crowd their way through that living mass to the south gate, or could induce their companions to carry them there, or, as happened in rare instances, could have medicines sent in to them, received any medical attendance whatever. Hundreds and thousands, as appears from the concurrent testimony of all the witnesses, sickened, languished, and died in that terrible place, without any medical attendance whatever. Horrible as this may appear, the hospital register bears indubitable proof of its truth.

Let me, in this connection, refer to an exhibit showing certain computation made from that register. The phrase "died in quarters" in the column of remarks, Dr. Thornburg says, describes those cases just alluded to, and they are shown to have amounted to the frightful number of 3,727.

These dead, as we learn from Dr. Thornburg's testimony, after being brought out, were examined, and, as far as possible, the diseases from which they died were entered on the hospital register for a purpose so diabolical that one shudders at the thought, and which I shall hereafter notice. Others, the causes of whose deaths could not even be guessed at, or, as Dr. Jones describes it, *morbi varii*, were marked on the register "unknown." Prisoners would often die on their way to the sick-gate, or while waiting their turns at the gate, or on the way from the gate to the hospital; and although in some cases such men might have been prescribed for, they could not afterward be identified, but had to be carried to the grave-yard and buried among the nameless. To prevent, if possible, this utter annihilation of memory, name, and fame, Dr. Thornburg instituted a system of placards, by which he sought to prevent, if possible, this reckless wiping out of all traces of the dead, and which prevented its occurrence, he thinks, after June, 1864; but there had already gone to their last home, as Captain Moore, who reinterred the dead at Andersonville, tells us, four hundred and fifty-one of our brave soldiers. Who they are the Andersonville register tells not, but there is a register where they are all recorded in letters of light, and one by one will these unknown rise in judgment against those who are responsible for their deaths.

Another frightful feature brought out by the testimony of Dr. Thornburg and others, and confirmed by nearly every soldier who testified before this court, is this, that only the worst cases were allowed to enter the hospital; and so closely was the line drawn discriminating against these supplicants, that often prisoners who had been refused admission into the hospital died on their way back to their quar-

ters. I will not stop now, as I am not inquiring into the responsibility of parties, to notice the ineffable cruelty of compelling the sick to remain in the stockade until they were in a dying condition, as some of the witnesses say, before they were eligible to a space as large as their own persons in what was falsely termed a hospital.

Nor did the rigors and sufferings of this prison cease till its very close. Their shelter continued the same—no more; while the treatment in and out of the stockade was not perceptibly better. From a temperature ranging during the summer up to near 150° Fahrenheit in the sun, as Dr. Thornburg tells you, during which there were many cases of sun-stroke, it fell in the winter to a temperature much below the freezing-point, nothing being left these miserable creatures with which to resist the inclemency of the weather but diseased and emaciated bodies, and ragged, worn-out clothing. Dr. Thornburg says that during the winter there was weather sufficiently severe to have frozen to death men with the scanty supplies these prisoners had, and in their emaciated condition; and Dr. Rice, after stating that the prisoners were exposed more or less during the whole winter, says, “I knew a great many to die there who I believed died from hunger and starvation, and from cold and exposure.” This is more than confirmed also by Dr. Bates. And to the eternal infamy of the man who registered it, and of the heartless wretches who caused it, let it be spread before the world that on the hospital register there appears this entry: “T. Gerrity, 106th Pennsylvania, frozen to death; admitted January 3d; died January 3d—died in the stockade;” showing that he not only froze to death in the stockade without medical treatment and without shelter, but that he was admitted into the hospital after death for a purpose which I shall hereafter show.

Wishing only to get at the truth of these things, and desirous particularly that the parties responsible shall be judged, as far as possible, out of their own mouths, I must trespass upon the patience of the court for a moment to no-

tice the evidence of Dr. G. G. Roy, a rebel surgeon who was on duty from the 1st of September until the close of the prison. In response to the question, "What was the condition of the men sent to the hospital from the stockade? Describe their diseases and appearance," he says:

"They presented the most horrible spectacle of humanity that I ever saw in my life: a good many were suffering from scurvy and other diseases; a good many were naked; a large majority barefooted; a good many without hats; their condition generally was almost indescribable. I attribute this condition to long confinement, want of the necessaries and comforts of life, and all those causes that are calculated to produce that condition of the system where there is just vitality enough to permit one to live. The prisoners were too densely crowded; there was no shelter, except such as they constructed themselves, which was very insufficient; a good many were in holes in the earth, with their blankets thrown over them; a good many had a blanket or oil-cloth drawn over poles; some were in tents constructed by their own ingenuity, and with just such accommodations as their own ingenuity permitted them to contrive; there were, you may say, no accommodations made for them in the stockade."

Speaking of the east side of the stockade, along the stream, he says:

"It is composed of marsh, and was blocked with trees, which had been cut down, acting as an obstruction to all deleterious animal and vegetable matter that passed after heavy weather through this stream; it is accumulated and became very obnoxious, and was a very fruitful source of malaria."

He then speaks of the large quantities of insects and vermin which resulted from a decay of animal or vegetable matter, and to such an extent was this place a breeder of insects, that he says mosquitos—rarely heard of in that vicinity—so filled the air "that it was dangerous for a man to open his mouth after sundown." He speaks also of the multitude of fleas there, and says:

"The fleas were as bad as mosquitos, and several weeks after the evacuation of the stockade they emigrated, and came up to the private houses in the vicinity, so that the occupants had to leave on account of them."

When we remember the facts brought out in such bold relief by the elaborate report of Dr. Jones as to the effect of

slight abrasions of the skin on men under the peculiar condition of body that most of these prisoners labored under, it would seem to have been almost useless for them to have attempted to resist the destroyer. Farther along in his testimony Dr. Roy says:

"This marshy place I spoke of was just in the rear of the hospital, and the winds, of course, blew the odors from there across the hospital, and it was not until late in the winter, if at all, that any attempt was made to drain it."

Still pursuing our inquiries in this direction, I desire to quote from a report made by Dr. G. S. Hopkins and Surgeon H. E. Watkins, addressed to General Winder, and which was made pursuant to his suggestion, as embracing in a concise form many of the causes of the disease and mortality at Andersonville.

Causes of Disease and Mortality.

- "1st. The large number of prisoners crowded together.
- "2d. The entire absence of all vegetables as diet, so necessary as a preventive of scurvy.
- "3d. The want of barracks to shelter the prisoners from sun and rain.
- "4th. The inadequate supply of wood and good water.
- "5th. Badly cooked food.
- "6th. The filthy condition of the prisoners and prison generally.
- 7th. The morbidic emanations from the branch or ravine passing through the prison, the condition of which cannot be better explained than by naming it a morass of human excrement and mud."

Preventive Measures.

- "1st. The removal immediately from the prison of not less than 15,000 prisoners.
- "2d. Detail on parole a sufficient number of prisoners to cultivate the necessary supply of vegetables; and, until this can be carried into practical operation, the appointment

of agents along the different lines of railroad to purchase and forward a supply.

"3d. The immediate erection of barracks to shelter the prisoners.

"4th. To furnish the necessary quantity of wood, and have wells dug to supply the deficiency of water.

"5th. Divide the prisoners into squads; place each squad under the charge of a sergeant; furnish the necessary quantity of soap, and hold these sergeants responsible for the personal cleanliness of his squad; furnish the prisoners with clothing at the expense of the Confederate, and, if that government be unable to do so, candidly admit our inability, and call upon the Federal government to furnish them.

"6th. By a daily inspection of bake-house and baking.

"7th. Cover over with sand from the hillsides the entire morass, not less than six inches deep; board the stream or water-course, and confine the men to the use of the sinks, and make the penalty for the disobedience of such orders severe."

I will not stop now to notice with what flippancy and recklessness the practical suggestions made by these surgeons were put aside and totally disregarded both by General Winder and Chief Surgeon White.

I can hardly think that farther proof, inasmuch as the proof is already made cumulative from this class of witnesses, is needed. There have been examined, with regard to the condition of the stockade and hospital, over seventy witnesses, and an examination of their testimony will, as I before stated, show a complete and perfect concurrence.

In July there seems to have been some correspondence between the rebel adjutant general and General Winder, who was then on duty at Andersonville. From a letter written by General Winder to Adjutant General Cooper, dated July 21st (see Exhibit No. 17), I extract the following:

"You speak in your indorsement of placing the prisoners properly. I do not comprehend what is intended by it. I know of but one way to place them, and that is to put them in the stockade,

where they have between four and five square yards to the man. This includes streets, and two acres of ground about the stream."

It will be observed that General Winder was very careful not to mention the strip twenty feet wide cut off by the "dead line." At the close of this month, from what motive we can only conjecture, Colonel D. T. Chandler, of the Rebel War Department, was sent to inspect the prison at Andersonville, and on the 5th of August, 1864, he made a full report. This report is no stronger than others from which we have already quoted, but, as it is destined to figure extensively in this case at other points in the argument, I beg to make a few extracts from it. He says:

"A small stream passes from west to east through the inclosure, furnishing the only water for washing accessible to the prisoners. Some regiments of the guard, the bakery, and the cook-house, being placed on rising ground bordering the stream before it enters the prison, renders the water nearly unfit for use before it reaches the prisoners. . . . From thirty to fifty yards on each side of the stream the ground is a muddy marsh, totally unfit for occupation; being constantly used as a sink since the prison was first established, it is now in a shocking condition, and cannot fail to breed pestilence. No shelter whatever, nor materials for constructing any, have been provided by the prison authorities, and the ground being entirely bare of trees, none is within the reach of the prisoners.

"The whole number of prisoners is divided into messes of two hundred and seventy, and subdivisions of ninety men, each under a sergeant of their own number; and but one Confederate States officer, Captain Wirz, is assigned to the supervision and control of the whole. In consequence of these facts, and the absence of all regularity in the prison grounds, and there being no barracks or tents, there are and can be no regulations established for the police, consideration for the health, comfort, and sanitary condition of those within the inclosure, and none are practicable under existing circumstances. . . . There is no medical attendance furnished within the stockade.

"Many—twenty yesterday—are carted out daily who have died from unknown causes, and whom the medical officers have never seen. The dead are hauled out daily by wagon-loads, and buried without coffins, their hands in many instances being first mutilated with an axe in removal of any finger-ring they may have. The sanitary condition of the prisoners is as wretched as can be, the principal causes of mortality being scurvy and chronic diarrhoea, the percentage of the former being disproportionately large among those brought from Belle Island. Nothing seems to have been

done, and but little, if any effort made to arrest it by procuring proper food. . . . Raw rations have been issued to a very large proportion who are entirely unprovided with proper utensils, and furnished with so limited a supply of fuel that they are compelled to dig with their hands in the filthy marsh before mentioned for roots, etc."

Surgeon Isaiah H. White, chief surgeon at the prison, in a report to Colonel Chandler, which was made an inclosure of his report to Richmond, says:

"The lack of barrack accommodations exposes the men to the heat of the sun by day and the dews by night, and is a prolific source of disease. . . . The point of exit of the stream through the wall of the stockade is not sufficiently bold as to permit the free passage of ordure when the stream is swollen by rains. The lower portion of this bottom-land is overflowed by a solution of excrement, which subsiding, and the surface exposed to the sun, produce a horrible stench."

Evidence of Rebel Officers and Soldiers.

I turn now to the evidence of rebel officers and soldiers on duty at Andersonville.

Colonel Alexander W. Persons, of the rebel army, the first commandant of the post, who remained there until the latter part of May, says that after he was relieved he returned there again and drew a bill for an injunction, and when called upon to explain for what reason, replied, "To abate a nuisance: the grave-yard made it a nuisance; the prison generally was a nuisance from the intolerable stench, the effluvia, the malaria that it gave up, and things of that sort."

The view here presented must strike the court as graphic indeed, when, without the question of humanity or inhumanity involved, persons living in the vicinity of Andersonville could gravely begin a legal proceeding to abate the prison as a nuisance on the ground mainly that the effluvia arising from it was intolerable!

Colonel George C. Gibbs, who afterward commanded the post, gives evidence on this point no less important. He was assigned to duty in October, 1864, and, although the number at that time was greatly diminished, he speaks of the pris-

oners being badly off for clothing and shelter, and in other respects destitute. Prior to this time—some time in July—he had visited the stockade, and he uses this language in regard to its appearance then:

“I rode around it on three sides, I think, and could see into it from the batteries that commanded it. I never saw so many men together in the same space before; it had more the appearance of an ant-hill than any thing else I can compare it to.”

Nazareth Allen, a rebel soldier on duty at Andersonville during the summer of 1864, fully corroborates these opinions; and farther, in relation to the location of troops above the stockade, and its effects upon the prisoners, says:

“The cook-house was above the stockade, and a good deal of washing was done up the branch, consequently a great deal of filth went down. Some of the troops were encamped on the stream above, on the side of the hill, and the rain would wash the filth of the camps and sinks into the stream, which would carry it to the stockade. I have seen the prisoners using it when it was in this filthy condition. . . . The stench was very bad. I have smelt it when I was at our picket camps, about a mile in a straight line. It was so bad that it kept me sick pretty nearly all the time I was around the stockade. The soldiers preferred picket duty to sentry duty on that account.”

William Williams, another rebel soldier on duty at the time, fully confirms this. He was on duty both on parapet and on picket, and had opportunity of observation. In reply to a question as to the condition of the stockade, he says:

“It was as nasty as a place could be. On one occasion I saw a man lying there who had not clothes enough on him to hide his nakedness. His hip bones were worn away. He had put up two sticks, and fastened his coat over them, to keep the sun off his face. There were a good many lying down sick, and others waiting on them. The crowded state of the men and the filthiness of the place created a very bad odor. I have smelt it at the depot, about a mile from the stockade.

“The stream that passed through the stockade ran down between the 1st and 2d Georgia regiments and Furlow’s battalion, and passed the bake-house. All the washings from the bake-house went right through the stockade, and also the washings from the camps. The pits used by the men were not five feet from the stream. Sometimes when it was rainy it was thick with mud and filth from the drainings of the camps inside the stockade.”

Calvin Honeycutt, another rebel soldier, on duty from April, 1864, to April, 1865, who was on duty on the stockade and also on picket, corroborates the testimony of his comrades.

James Mahan, a rebel private, afterward made a lieutenant, who was on duty at Andersonville for about five months during the summer of 1864, gives similar testimony; and John F. Heath, regimental commissary with the rank of captain, on duty from May till October, 1864, fully confirms the testimony upon this point already given.

Evidence of Residents of Georgia.

Samuel Hall, a prominent gentleman residing in Macon, Georgia, whose sympathies, he tells us, were from the beginning with the rebellion, and who held a high civil official position, says:

"When first I saw it (the prison) in the month of August, it was literally crammed and packed; there was scarcely room for locomotion; it was destitute of shelter, as well as I could judge, and at that time there was a great mortality among the prisoners."

Rev. William John Hamilton also gives important testimony as to the condition of the stockade, which he visited in the capacity of a priest. He was there in May, and at different periods subsequently. He says:

"I found the stockade extremely crowded, with a great deal of sickness and suffering among the men. I was kept so busy administering the sacrament to the dying that I had to curtail a great deal of the service that Catholic priests administer to the dying; they died so fast, I waited only upon those of our own church, and do not include others among the dying. . . . The stockade was extremely filthy, the men all huddled together and covered with vermin. The best idea I can give the court of the condition of the place is perhaps this: I went in there with a white linen coat on, and I had not been in there more than ten minutes or a quarter of an hour when a gentleman drew my attention to the condition of my coat: it was all covered over with vermin, and I had to take it off and leave it with one of the guards, and perform my duties in my shirt-sleeves, the place was so filthy."

Again, giving an illustration of the sufferings of the prisoners, and especially of the intense heat of the sun, he says:

"I found a boy not more than sixteen years old, who came to me for spiritual comfort, without jacket or coat, or any covering on his feet, suffering very much from a wound in his right foot. The foot was split open like an oyster, and on inquiring the cause I was told it was from exposure to the sun in the stockade, and not from any wound received in battle. On returning to the stockade a week afterward I learned that he stepped across the dead line and requested the guard to shoot him. . . . He had no medical treatment, nor had any others, so far as I could see, to whom I administered the sacrament in the stockade.

"On my second visit, I was told there was an Irishman at the extreme end of the stockade who was calling out for a priest. . . . I tried to cross the branch to reach him, but was unable to do so, as the men were all crowding around there trying to get into the water to cool themselves and wash themselves, and I had to leave the stockade without seeing the man. . . . The heat was intolerable. There was no air at all in the stockade. The logs of which the stockade was composed were so close together that I could not feel any fresh air inside, and with a strong sun beaming down upon it, and no shelter at all, of course the heat must have been insufferable; at least I felt it so. The priests who went there after me, while administering the sacrament to the dying, had to use an umbrella, the heat was so intense."

Ambrose Spencer, a gentleman of prominence in his state, residing near Andersonville during the war, and a frequent visitor to that place, gives us a graphic picture of the prison which I cannot refrain from quoting. He says:

"I had frequent opportunities of seeing the condition of the prisoners, not only from the adjacent hills, but on several occasions from the outside of the stockade, where the sentinel's grounds were. As to the condition of the prisoners, I can only answer the question by saying that their condition was as wretched as could well be conceived, not only from exposure to the sun, the inclemency of the weather, and the cold of winter, but from the filth—from the absolute degradation which was evident in their condition. I have seen that stockade after three or four days' rain, when the mud, I should think, was at least twelve inches deep. The prisoners were walking or wading through that mud. . . . The condition of the stockade can, perhaps, be expressed most accurately by saying that, in passing up and down the railroad, if the wind was favorable, the odor of the stockade could be detected at least two miles."

There are others of this class who testify upon this point, but it would seem useless to give farther extracts.

Evidence of Union Prisoners.

We now come to the fifth and last class of testimony upon this point—the experience and personal observations of the soldiers of the Union who were themselves sufferers.

It is not my purpose, in this connection, to enter into a detail of the sufferings, the acts of cruelty inflicted, and the inhuman treatment they received, or to inquire by whom these things were done. Reserving that for its proper place in the argument, I shall simply refer to this testimony to assist us in ascertaining more certainly the horrors to which these brave men were subjected.

Dr. A. W. Barrows, hospital steward of the 27th Massachusetts Regiment, and acting assistant post surgeon at Plymouth, North Carolina, arrived at Andersonville on the 28th of May, and remained there six months. Owing to his knowledge of medicine and efficiency, he was paroled by the prisoner, and assigned to duty in the hospital. His testimony is important, as showing the condition of the hospital mainly; but he has also given some material evidence with regard to the stockade, and from it I make the following extract:

“I remember when there have been as many as seventy-five to one hundred who died during the day in the stockade, and who were never taken to the hospital. That was in the month of August.”

Robert H. Kellogg entered the prison on the 3d of May, 1864, and remained there until the following September. He says:

“We found the men in the stockade ragged, nearly destitute of clothing, totally unprovided with shelter except that which tattered blankets could afford. They looked nearly starved. They were skeletons covered with skin. The prison seemed very crowded to us, although there were thousands brought there after that. . . . They were in a very filthy condition—indeed, there were but two issues of soap made while I was there. . . . When we first went there the nights were very cold. That soon passed away as the season advanced, and during the summer it was intensely hot. There were twenty-one rainy days in the month of June. Our supply of fuel was not regular nor sufficient. We were

allowed to go several times under guard, six men from a squad of ninety, to bring in what we could find in the woods on our shoulders; but the greater part of the time we had to rely upon our supply of roots, which we dug out of the ground or grubbed for in the swamp—pitch-pine roots. . . . Rations were issued raw, many times without fuel to cook them. The squad of ninety, of which I was sergeant, went from the 30th of June to the 30th of August without any issue of wood from the authorities.

"The quality of the rations was very poor; the quantity greatly varied. There were days when we got nothing at all. I made a note of at least two such days. . . . There were other days when we got but very little; other days enough, such as it was. When my regiment went there the men were healthy. They gradually sickened, until, I remember, one morning at roll-call, out of my ninety there were thirty-two who were not able to stand up. This resulted principally from scurvy and diarrhoea. This was on the 21st of August, a number of the men of my squad having died up to that time. The mass of the men had to depend on the brook for their water. It at many times was exceedingly filthy. I have seen it completely covered with floating grease, and dirt, and offal. After the prisoners had been there some time they dug some wells, and there were some springs along the south side of the prison, on the edge of the hill by the swamp, but the supply from that source was entirely inadequate; they supplied the wants of a few. . . . Of the four hundred men captured with me, more than three hundred are dead; they died in prison, or a few days after being paroled, and that is a larger percentage of living than there is in many regiments. The 24th New York Battery, which was captured at Plymouth, was nearly annihilated."

This is the simple unvarnished narrative of perhaps as intelligent a witness as has been upon the stand. He has written a book entitled "Life and Death in Southern Prisons," which has been used extensively by counsel for the accused.

I do not want to burden the record with a recapitulation of all that these witnesses have testified to, but I think it can be safely said that not one word of Robert H. Kellogg's has been or can be disproved. There are many of his comrades who fully confirm him, without adding any special facts that would tend to elucidate this point. These I shall omit in this connection. There are others, however, who give additional facts bearing on this subject, and I beg your indulgence while I refer to them.

Boston Corbett's testimony brings out some facts to which

I first will call your attention. Speaking of the heat, he says, "It was so great that I have the marks upon my shoulders yet." Of the brook, and the swamp bordering it, he says:

"It was a living mass of putrefaction and filth; there were maggots there a foot deep; any time we turned over the soil we could see the maggots in a living mass. I have seen the soldiers wading through it, digging for roots to use for fuel; I have seen around the swamp, the sick in great numbers, lying pretty much as soldiers lie when they are down to rest in line after a march; in the morning I could see those who had died during the night; and in the daytime I could see them exposed to the heat of the sun, with their feet swelled to an enormous size—in many cases large gangrene sores, the sores filled with maggots and flies which they were unable to keep off; I have seen men lay there in an utter destitution, not able to help themselves, lying in their own filth. They generally chose that place (near the swamp), those who were most offensive, because others would drive them away, not wanting to be near those who had such bad sores. They chose it because of its being so near to the sinks. In one case a man died there, I am satisfied, from the effects of lice; when the clothes were taken off his body, the lice seemed as thick as the garment—a living mass.

"The water in the stockade was often very filthy. Sometimes it was middling clear. At times I would go to those who had wells dug; sometimes they would give me a drink, sometimes they would not; they used such rough language to me that I turned away parched with thirst, and drank water from the stream rather than beg it from the men who had wells.

"The minds of the prisoners were in many cases so affected that the prisoners became idiotic.

"I have taken food given me to the stream and washed the maggots from it. I have seen them in the sores of soldiers there, and I have seen them in such a way that it is hardly fit to describe in this court."

Too terrible for belief as this may seem to be, it stands confirmed by at least fifty witnesses.

Martin E. Hogan is a witness whom the court will remember as among the more intelligent, and, at the same time, truthful and candid. His observations were confined mainly to the hospital, but I feel impelled to make a brief extract from his testimony in regard to the stockade. He says:

"At the time of my arrival there (speaking of the stockade) it was very much crowded, so much so that you could scarcely el-

bow your way through the crowd in any part of the camp. I noticed a great many men lying helpless on the ground, seemingly without care, without any body to attend to them, lying in their own filth; a great many of them calling for water; a great many crying for food; nobody apparently paying any heed to them; others almost destitute of clothing, so numerous that I could not begin to say how many."

Then follows testimony similar to that of Boston Corbett in regard to the swamp and vermin in it.

Andrew J. Spring, who went to Andersonville in May, 1864, says that, upon entering the stockade,

"I found the prisoners destitute of clothing; I could not tell in many cases, whether they were white men or negroes."

On the 27th of the same month he was detailed for duty outside. After being outside the stockade about six weeks, he says,

"I applied to the lieutenant of the guard at the gate, and gave him twelve dollars in greenbacks to let me go in and stay an hour to see our boys. I went in, and spent an hour inside the stockade. A great many of the boys were very poor. They were some of my own best friends, whom I could not recognize till they came and shook hands with me and made themselves known; even then I could hardly believe they were the same men. I have seen men, acquaintances of mine, who would go around there, not knowing any thing at all—hardly noticing any thing; I have seen men crippled up so that they had scarcely any life in them at all; they would lie on the ground, to all appearance dead; I went up to several who I thought were dead, but I found they had a little life in them."

James H. Davidson, speaking of the condition of the stockade, says:

"I have seen men who had the appearance of being starved to death. I have seen men pick up and eat undigested food that had passed through other men all through the camp. It came from men who were not able to go to the slough, and they would find it all through the camp." This, it will be remembered, is testified to by very many.

Daniel W. Burringer says:

"I have seen men eat undigested food that had passed through other men; they would wash it and eat it—pick it up from the sinks."

Condition of the Hospital.

It is not proposed to enter as fully into the condition of the hospital as might be done from the reports and evidence before us. Sufficient will be given, however, to warrant the conclusion that it was very little better than that of the stockade itself; and, in view of the discrimination which the surgeons were directed to make in the admission of men from the stockade into the hospital, we can readily understand why the prisoners almost uniformly bade their comrades farewell when they were taken from the stockade to the hospital. The evidence which I shall bring to your recollection will also justify the remark made by one of the surgeons, who says that it really was no hospital.

Here, also, we have recourse to the official report of Dr. Joseph Jones, in which we find his remarks upon the condition of the hospital quite as lucid and elaborate as those in reference to the stockade.

After speaking of the stream running through one corner of the hospital stockade, and stating that its upper portion was used for washing by the patients, and the lower portion as a sink, he remarks:

"This part of the stream is a semi-fluid mass of human excrement, and offal, and filth of all kinds. This immense cess-pool, fermenting beneath the hot sun, emitted an overpowering stench. . . . North of the hospital grounds, the stream which flows through the stockade pursues its sluggish and filthy course. The exhalations from the swamp, which is loaded with the excrement of the prisoners confined in the stockade, exert their deleterious influences on the inmates of the hospital.

"Within the hospital inclosure, less than five acres, the patients and attendants, near two thousand, are crowded, and are but poorly supplied with old and ragged tents. A large number of them are without any bunks in the tents, and lay upon the ground, oftentimes without even a blanket. No beds or straw appear to have been furnished.

"The tents extended to within a few yards of the small stream, which, as he before observed, was used as a privy, and was loaded with excrement.

"I observed a large pile of corn bread, bones and filth of all kinds, thirty feet in diameter, and several feet in height, swarming with myriads of flies, in a vacant space near the pots used

for cooking. Millions of flies swarmed over everything, and covered the faces of the sleeping patients, crowded down their mouths, and deposited their maggots upon the gangrenous wounds of the living and the mouths of the dead. Mosquitos in great numbers also infested the tents, and many of the patients were so stung by these pestiferous insects that they resembled those suffering with a slight attack of measles. The police and hygiene of the hospital was defective in the extreme" (Record, pp. 4350-4351).

"Many of the sick were literally incrustated with dirt and filth, and covered with vermin. When a gangrene wound needed washing, the limb was thrust out a little from the blanket, or board, or rags upon which the patient was lying, and water poured over it, and all the putrescent matter allowed to soak into the ground floor of the tent. . . . I saw the most filthy rags, which had been applied several times and imperfectly washed, used in dressing recent wounds. Where hospital gangrene was prevailing, it was impossible for any wound to escape contagion under the circumstances.

"The manner of disposing of the dead is also calculated to depress the already despondent spirits of these men. . . . The dead-house is merely a frame covered with old tent-cloth and a few bushes, situated in the southwestern corner of the hospital grounds. When a patient dies, he is simply laid in the narrow street in the front of his tent until he is removed by the Federal negroes detailed to carry off the dead. If the patient dies during the night, he lies there until morning; and during the day, even, the dead were frequently allowed to remain for hours in these walks. In the dead-house the corpses lay on the bare ground, and were in most cases covered with filth and vermin.

"The cooking arrangements are of the most defective character. Two large iron pots, similar to those used for boiling sugar-cane, appeared to be the only cooking utensils furnished by the hospital for the cooking of near two thousand men, and the patients were dependent in a great measure on their own miserable utensils. . . . The air of the tents was foul and disagreeable in the extreme, and, in fact, the entire grounds emitted a most noxious and disgusting smell. I entered nearly all the tents, and carefully examined the cases of interest, and especially the cases of gangrene, during the prosecution of my pathological inquiries at Andersonville, and therefore enjoyed every opportunity to judge correctly of the hygiene and police of the hospital."

To show that this frightful condition of affairs did cease after a great portion of the prisoners were removed, Dr. Jones observes:

"The ratio of mortality continued to increase during September; for, notwithstanding the removal of half the entire number of prisoners during the early portion of the month, seventeen hun-

dred and fifty-seven deaths were registered from September 1st to the 21st, and the largest number of deaths upon any one day occurred during this month, on the 16th, viz., one hundred and nineteen."

Afterward, remarking upon the causes of the great mortality among the Federal prisoners, he says:

"The chief causes of death were scurvy and its results, bowel affections and chronic and acute diarrhoea, and dysentery. The bowel affections appeared to have been due to the diet and habits of the patients, the depressed, dejected state of the nervous system and moral and intellectual powers, and to the effluvia arising from decomposed animal and vegetable filth.

"Almost every amputation was followed finally by death, either from the effects of gangrene, or from the prevailing diarrhoea and dysentery. . . . So far as my observation extended, very few of the cases of amputation for gangrene recovered" (Record, p. 4378).

The evidence of Dr. John C. Bates is important as showing the condition of the hospital. He was a rebel surgeon, on duty at Andersonville from the middle of September, 1864, to the last of March, 1865, embracing a period when it is claimed the sufferings were much lighter than they had been. This, we have already seen by Dr. Jones' report, was not true, even after thousands of the prisoners had been sent away, and we shall see from the testimony of Dr. Bates that it is wholly incorrect. He says:

"Upon going to the ward to which I was assigned, I was shocked at the appearance of things. The men were lying partially nude, and dying, and lousy; a portion of them in the sand, and others upon boards which had been stuck up on little props, pretty well crowded; a majority of them in small tents. . . . I would go to other parts of the hospital when officer of the day. The men would gather round me and ask for a bone. I would give them whatever I could find at my disposition without robbing others. I well knew that an appropriation of one ration took it from the general issue; that when I appropriated an extra ration to one man, some one else would fall minus. I then fell back upon the distribution of bones. They did not presume to ask me for meat at all. So far as rations are concerned, that is the way matters went along for some time after I went there. . . . They could not be furnished with any clothing except the clothing of the dead, which was generally appropriated to the living. There was a partial supply of fuel, but not sufficient to keep the men warm and

prolong their existence. As medical officer of the day, I made examinations beyond my own ward, and reported the condition. As a general thing, the patients were destitute, filthy and partly naked. The clamor all the while was for something to eat."

Dr. G. G. Roy, whose testimony was before referred to, in speaking of the hospital, says:

"I found it in a very deplorable condition. There was no comfort attached to it whatever. Many of the tents were badly worn, torn and rotten, and, of course, permitted the water to leak through. The patients were not furnished with bunks, or bedding, or bed-clothing, or anything of that sort."

He speaks, as did all the other medical officers on duty there, of the great dearth of medicines, but also concurs with most of them in the opinion that medicine was not so much needed as proper diet; and he confirms generally the description given by Dr. Jones.

On the 26th day of September, Dr. Amos Thornburg, assistant surgeon, in a report to Dr. Stevenson, the surgeon in charge, calls special attention to the very bad sanitary condition of the hospital. He reports:

"That patients are lying on the cold ground without bedding or blankets; also, that we have a very scanty supply of medicines, and that the rations are not of the proper kind, and not issued in proper quantity."

The Charge of Conspiracy.

We come now to the consideration of the third branch of the subject. Having presented a faithful representation—faithful, because the witnesses themselves have given it—of the condition of the stockade and the hospital, we shall proceed to unfold the extent of the conspiracy, the purposes of the conspirators, and the cruel and devilish means resorted to accomplish their ends.

I confess to you, gentlemen, that I enter upon this branch of the argument with regret and reluctance. I confess that, to a greater or less extent, our nationality and the good name we bear are involved in the issue; but I do not fear to present to the world on this account this great conspiracy of treason,

this confederation of traitors, though it shock from the moral sentiment of the universe; for, however much we may deplore the fact that at its head and front were Americans, once prominent in the councils of the nation, they have forfeited all rights—they have ceased in any way to represent the true spirit of Americanism—they are outlaws and criminals, and can not, by their crimes, attain our fair escutcheon. It is the work of treason, the legitimate result of that sum of all villainies, and which, by many, very many proofs during the past four years, has shown itself capable of this last one developed. When we remember that the men here charged, and those inculcated, but not named in the indictment, are some of them men who were at the head of the late rebellion from its beginning to its close, and, as such chiefs, sanctioned the brutal conduct of their soldiers as early as the first battle of Bull Run—who perpetrated unheard-of cruelties at Libby and Belle Island—who encouraged the most atrocious propositions of retaliation in their Congress—who sanctioned a guerrilla mode of warfare—who instituted a system of steamboat burning and firing of cities—who employed a surgeon in their service to steal into our capital city infected clothing—who approved the criminal treatment of the captured garrisons at Fort Pillow, Fort Washington and elsewhere—who were guilty of the basest treachery of sending paroled prisoners into the field—who planted torpedoes in the paths of our soldiers—who paid their emissaries for loading shells in the shape of coals, and intermixing them in the fuel of our steamers—who ordered an indiscriminate firing upon our transports, and vessels, and railroad trains, regardless of whom they contained—who organized and carried to a successful termination a most diabolical conspiracy to assassinate the President of the United States; when we remember these things of these men, may we not, without hesitancy, bring to light the conspiracy here charged?

Before, however, entering into a discussion of the evidence, let me present the law governing in cases of conspiracy. I quote from the very able argument of Hon. John A. Bing-

ham, delivered for the prosecution in the trial of the conspirators for the assassination of President Lincoln, whose law propositions and authorities given can not be gainsaid.

"If the conspiracy be established as laid, it results that whatever was said or done by either of the parties thereto in the furtherance or execution of the common design, is the declaration or act of all the other parties to the conspiracy; and this, whether the other parties, at the time such words were uttered or such acts done by their confederates, were present or absent."

The declared and accepted rule in cases of conspiracy is that,

"Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party in pursuance of the original concerted plan and in reference to the common object, is, in the contemplation of law as well as of sound reason, the act of the whole party, and therefore the proof of the act will be evidence against any of the others who were engaged in the same general conspiracy, without regard to the question whether the prisoner is proved to have been concerned in the particular transaction" (Phillips on Evidence, p. 210).

The same rule obtains in cases of treason:

"If several persons agree to levy war, some in one place and some in another, and one party do actually appear in arms, this is levying of war by all, as well those who were not in arms as those who were, if it were done in pursuance of the original concert, for those who made the attempt were emboldened by the confidence inspired by the general concert, and therefore these particular acts are in justice imputable to all the rest" (1 East, Pleas of the Crown, 97; Roscoe, 84).

In *ex parte* Bollman and Swartwout, 4 Cranch. 126, Marshall, Chief Justice, rules:

"If war be actually levied—that is, if a body of men are actually assembled for the purpose of effecting by force, for treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

In the United States v. Cole et al., 5 McLean 601, Mr. Justice McLean says:

"A conspiracy is rarely, if ever, proved by positive testimony. When a crime of high magnitude is about to be perpetrated by a

combination of individuals, they do not act openly, but covertly and secretly. The purpose formed is known only to those who enter into it. Unless one of the original conspirators betray his companions, and give evidence against them, their guilt can only be proved by circumstantial evidence. . . . It is said by some writers on evidence that such circumstances are stronger than positive proof. A witness swearing positively, it is said, may misapprehend the facts or swear falsely, but that circumstances cannot lie. . . . The common design is the essence of the charge; and this may be made to appear when the defendants steadily pursue the same object, whether acting separately or together, by common or different means, all leading to the same unlawful result. And where *prima facie* evidence has been given of a combination, the acts or confessions of one are evidence against all. . . . It is reasonable that where a body of men assume the attribute of individuality, whether for commercial business or the commission of a crime, that the association should be bound by the acts of one of its members in carrying out the design.

"It is the rule of law, not to be overlooked in this connection, that the conspiracy or agreement of the parties, or some of them, to act in concert to accomplish the unlawful act charged, may be established either by direct evidence of a meeting or consultation for the illegal purpose charged, or, more usually, from the very nature of the case, by circumstantial evidence" (2 Starkie, 232).

Lord Mansfield ruled

"That it was not necessary to prove the actual fact of a conspiracy, but that it may be collected from collateral circumstances" (Parsons' Case, 1 W. Blackstone, 392).

"If," says a great authority on the law of evidence, "on a charge of conspiracy, it appears that two persons by their acts are pursuing the same object, and often by the same means, or one performing part of the act, and the other completing it for the attainment of the same object, the jury may draw the conclusion there is a conspiracy. If a conspiracy be formed, and a person join in it afterward, he is equally guilty with the original conspirators" (Roscoe, 415).

"The rule of the admissibility of the acts and declarations of any one of the conspirators, said or done in furtherance of the common design, applies in cases as well where only part of the conspirators are indicated and upon trial. Thus, upon an indictment for murder, if it appear that others, together with the prisoner, conspired to commit the crime, the act of one, done in pursuance of that intention, will be evidence against the rest" (2 Starkie 237). "They are alike guilty

as principals'' (Commonwealth v. Knapp, 9 Pick. 496, 10 Pick. 477; 6 T. R. 528, 11 East 584).

Let us see what the evidences are of a common design to murder by starvation these hapless, helpless wretches. First, then, who are the officers, high and low, civil and military, whom the evidence implicates in this great crime? As I shall show you by the testimony, there are associated in this conspiracy, as directly implicated and as perpetrators, the prisoner at the bar, Brigadier General John H. Winder, Surgeon Josiah H. White, Surgeon R. R. Stevenson, Dr. Kerr, Captain R. B. Winder, Captain W. S. Winder, Captain Reed, James H. Duncan, W. W. Turner and Benjamin Harris. Remote from the scene, but no less responsible than those named—nay, rather with a greater weight of guilt resting upon them, are the leader of the rebellion, his war minister, his surgeon general, his commissary and quartermaster general, his commissioner of exchange, and all others sufficiently high in authority to have prevented these atrocities, and to whom the knowledge of them was brought.

Chief among the conspirators and the actual participators in the crime, the immediate tool first and last of the rebel government, we shall see, was General Winder. It is proper, therefore, that we should know who he was, and the precise relations he bore to the government which he represented.

We learn from many sources that he had for a long time prior to the organization of the Andersonville prison been at the head of the military prisons in and around Richmond, holding also the position of provost marshal of that important center of the rebellion.

We learn from the witness J. B. Jones that his rule as provost marshal was almost a reign of terror; that his authority was so great he could arrest men indiscriminately even in distant states, and that he was constantly sustained and supported by Jefferson Davis and his confidential adviser and premier, Mr. Benjamin.

The witness Cashmeyer, the confidential detective and constant companion of General Winder till the close of the re-

bellion, says: "Their relations (those of Davis and Winder) were very friendly indeed, and very confidential; I often heard General Winder say so; I often saw him go there and come from there." About the time General Winder's reign of terror was at its climax, and there was great opposition felt and expressed toward him both in and out of the rebel Congress, a combined effort was made to have him relieved and sent away, Generals Bragg and Ransom being prominent in the movement.

At this time Cashmeyer says: "President Davis was his (Winder's) especial friend; when the order relieving General Winder came from the War Department, he took it and went up to Mr. Davis. President Davis indorsed on it, as well as I can recollect, that 'it was entirely unnecessary and uncalled for.'" Some time after this it was thought wise by the rebel authorities to organize the Andersonville Prison, and the whole matter was placed in the hands of General Winder by orders issued from the War Department for that purpose. General Winder himself did not go to Andersonville until about the 1st of June, but he sent forward, as we learn from the testimony of Cashmeyer, of Spencer, of Colonel Persons (Record, p. 600), of Captain Wright, and others, his son, Captain W. S. Winder, of his staff, as his special executive officer, and, as we learn from the testimony of Colonel Persons, "with absolute discretion in the location of the prison." This was in the latter part of December, 1863.

Shortly after, another staff officer of General Winder's, a nephew of his, Captain R. B. Winder, a quartermaster, arrived at Andersonville, and assumed the duties of his office. Captain Wright, in speaking of him, says: "He told me that he had no orders to report to any quartermaster at all; that he reported directly to Richmond, and received his instructions from Richmond." Subsequently, in the month of March, 1864, General Winder sent still another of his staff officers, the prisoner at the bar, who, as we learn from his report, made May 8, was assigned to the command of the prison on the 27th of March.

Of him Colonel Persons says :

"He came direct from Richmond—my understanding was, by order of General Winder. I saw an official order to that effect. I received a communication, about the time Captain Wirz reached there, from General Winder. It stated that Captain Wirz was an old prison officer, a very reliable man, and capable of governing prisoners, and wound up that I would give him command of the prison proper."

From the return of staff officers made by General Winder after he had himself arrived at Andersonville, and who, he says, were acting under orders of Brigadier General John H. Winder, commanding the post at Andersonville, Georgia, commanding the camps and stockade containing Federal prisoners of war, and the guard troops for the same, the prison of Federal prisoners of war at Macon, etc., etc., we find that Dr. Isaiah H. White, also on his staff, was assigned to duty at Andersonville, by orders of the War Department at Richmond, as chief surgeon in charge of the prison hospital. He arrived at Andersonville about the same time as the two Captains Winder.

This comprises the original corps of officers sent from Richmond to carry out the hellish purposes of the rebel government, and which, as we shall see as we advance, was most faithfully done by them. Can there be any doubt as to what the original purpose of the rebel government was? Let us go to the very origin of the prison.

You will remember that when Colonel Persons was on the stand, he told you that, assuming to do what the law and the army regulations made it the duty of the quartermaster to do, and which, in his case, Captain Winder had wholly neglected to do, he sent to the different sawmills along the line of the railroad for lumber, moved, as he tells you, by a feeling of humanity, and a desire to alleviate, in some way, the sufferings of the prisoners. He says:

"I had concentrated there, I suppose, about five or six trainloads of lumber; I suppose nearly fifty car loads, to erect a shelter. Was in the act of doing so—was just carrying the lumber, when I was relieved. General Winder went into the stockade sev-

eral times after I was relieved from duty, and I saw no shelter there. I saw forty or fifty houses springing up outside of the grounds. The lumber disappeared in that way."

At this time the journal of the prison shows there were over nineteen thousand prisoners in the stockade. This was the first official act of General Winder on his arrival. It was the third time Colonel Persons had given mortal offense, and he was no longer to be tolerated. What could more strongly present the unmitigated diabolism of that friend of President Davis—that man, upon the order relieving whom the rebel chief wrote, "It is entirely unnecessary and uncalled for?" This was the man who found a ready advocate in the rebel premier, Mr. Benjamin, and who was not only sustained from the first to the last by his chief, but was rewarded for official conduct that will place his name among those of the most infamous of any age or clime. General Winder's second act was to establish himself conformably, and at a respectful distance from the prison, where he remained from the first of June until early in the fall.

Notice now, as we advance, how the sufferings of this prison increased—how everything from which torture and death could result was resorted to—how all these methods of inhuman punishment instituted by the prisoner were approved and sanctioned by General Winder, and that, during the whole period of his command, not a single act is recorded which does not prove him to have been not only "a brutal man," as Mr. Spencer says he was, but that he was the chief instrument in the hands of a wicked, treasonable conspiracy to murder the prisoners of war in his custody. He came there with authority unlimited, with discretion to do whatever circumstances required to carry out the purpose of his command. In an appeal published by him to the citizens of the surrounding counties, he calls for "two thousand negroes, properly supplied with axes, spades and picks, and supported by the requisite number of wagons and teams," for the purpose of rendering more hopeless the imprisonment of our soldiers, holding over the people of that vicinity

the terrors of impressment, which, in this appeal, he claims to have authority to make. Yet, with all this power, with all these appliances at hand, and within reach of his call, not a single shelter did he ever erect—not a ditch did he dig to drain that horrible cesspool below the stockade and within it—not a tithe of the wood absolutely necessary did he cause to be taken into the stockade—not once did he visit that place over which he had supreme control—not a well did he cause to be dug within it—not one order did he issue to abate one jot or tittle of the frightful rigors of that prison-pen—not a kindly or humane sentiment is he shown, during that whole time, to have uttered toward these prisoners in his custody. On the contrary, he scattered to the four winds, as we have seen, that immense pile of lumber accumulated by Colonel Persons for the purpose of erecting shelters in the stockade; he approved all that had been done by his subordinate, the prisoner, even recommending him for promotion; he legalized the detail of Turner, who was a Confederate soldier, to take command of a pack of hounds to run down prisoners, and afterward permanently detached him from his regiment for that purpose; he authorized and ordered the hanging of six prisoners of war within the stockade, which, by all the laws of war, was no more nor less than murder, so far as he was concerned; he brutally refused the philanthropic ladies of Americus twice in their attempts to render assistance to the sick at the hospital, even intimating on one of those occasions to those ladies of the highest respectability that a repetition of their humane efforts would bring upon them a punishment too infamous to be named. Is it still contended that there was no conspiracy: that these things evinced no common design to destroy; that of all these things the Richmond government was in blissful ignorance? Let us see. On the 21st of July, 1864, General Winder addressed a letter to the War Department at Richmond, dated Andersonville, in which he uses the following language, before quoted:

“You speak in your indorsement of placing the prisoners properly. I do not exactly comprehend what is intended by it. I know

of but one way to place them, and that is to put them into the stockade, where they have four or five square yards to the man."

Is it possible that he did not comprehend what was intended by the War Department? Can it be that he knew of but one way to place those prisoners properly?

His government did not dare to speak more definitely, nor was it necessary to such a man as General Winder, occupying the position he did, and with the letter of Robert Ould in his private desk, written as early as March, 1863—a private letter written by himself, and indorsed by his own hand. The one way was the way given by his original instructions; it was the way understood by W. S. Winder when he said it was the intention to kill more Yankees at Andersonville than they did at the front; it was the way meant and well understood by General Winder when he said to Mr. Spencer that, for his own part, he would as lief the damned Yankees would die there as anywhere else; that, upon the whole, he did not know that it was not better for them, and which he afterward disclosed to Colonel Chandler in the remark, "It is better to leave them in their present condition until their number has been sufficiently reduced by death to make the present arrangements suffice for their accommodation;" it was the way well understood by the rebel government when, in the teeth of the protests of humane officers, and in the face of the official reports of the mortality of that place, they continued to forward prisoners trainload after trainload to an already overcrowded prison; it was the way dictated to the agent of that government, Robert Ould, and revealed by him in his letter to Winder, when he declares, speaking of exchanges:

"The arrangement I have made works largely in our favor; we get rid of a set of miserable wretches, and receive in return some of the best material I ever saw. This, of course, is between ourselves."

It was the way understood perfectly by General Howell Cobb when, in a speech at Andersonville, he pointed with

terrible significance to the grave-yard, remarking, "That is the way I would care for them."

It was the way well understood by the prisoner at the bar, who is shown to have uttered sentiments similar to those expressed by W. S. Winder on more than one hundred occasions; it was the way, and the only way, ever indicated by the chief of the rebel government and his Secretary of War, else why did he, with this frightful picture before him, deliberately fold General Winder's letter, indorsing it "Noted—file. J. A. S.?"

Let us advance another step in the evidence connecting the Richmond government with these atrocities. Colonel D. T. Chandler, of the rebel War Department, pursuant to an order of his chief of July 25, 1864, directing him to make an inspection at Andersonville and other places in the Confederacy, submitted a report dated Andersonville, August 5, 1864, and which reached the War Department August 17, 1864. This officer, from whose report we have already quoted, gives a graphic description of the sufferings of the prisoners of war, and in earnest terms beseeches his government that no more be sent forward to that place, and that immediate steps be taken to relieve the sufferings of those prisoners already there, making many practical suggestions for their comfort which he thought could be readily carried out. In a supplemental report, also dated August 5, and which was received with the report first named, he says:

"My duty requires me respectfully to recommend a change in the officer in command of the post, Brigadier General John H. Winder, and the substitution in his place of some one who unites both energy and good judgment with some feelings of humanity and consideration for the welfare and comfort (so far as is consistent with their safe-keeping) of the vast number of unfortunates placed under his control—some one, at least, who does not advocate, deliberately and in cold blood, the propriety of leaving them in their present condition until their number has been sufficiently reduced by death to make the present arrangements suffice for their accommodation, and who will not consider it a matter of self-laudation and boasting that he has never been inside the stockade—a place the horrors of which it is difficult to describe, and which

are a disgrace to civilization—the condition of which he might, by the exercise of a little energy and judgment, even with the limited means at his command, have considerably improved.”

In his examination touching this report, Colonel Chandler says:

“I noticed that General Winder seemed very indifferent to the welfare of the prisoners, indisposed to do anything, or to do as much as I thought he ought to do to alleviate their sufferings. I remonstrated with him as well as I could, and he used that language which I reported to the department with reference to it—the language stated in the report when I spoke of the great mortality existing among the prisoners, and pointed out to him that the sickly season was coming on, and that it must necessarily increase unless something was done for their relief; the swamp, for instance, drained, proper food furnished and in better quantity, and other sanitary suggestions which I made to him. He replied to me that it was better to see half of them die than to take care of the men.”

And to show that he can not be mistaken in what he avers, Colonel Chandler speaks of Major Hall, his assistant, having first reported to him similar language used by General Winder to him, and remarks:

“I told Major Hall that I thought it incredible—that he must be mistaken; he told me no; ‘that he had not only said it once, but twice;’ and, as I have stated, he subsequently made use of this expression to me.”

Now, let us see what the rebel government had to do with this report. As I before remarked, it reached Richmond on the 17th day of August. Immediately on its reception, as we learn from Captain C. M. Selph, of the rebel War Department, it was carefully briefed, and extracts made and sent to the heads of the different bureaus, the commissary general and the quartermaster general; a report of Dr. White, an inclosure of Colonel Chandler’s report, being sent to the surgeon general. The entire report was then laid before the Secretary of War, Mr. Seddon, and, there can not be the shadow of a doubt, was immediately, and fully, and seriously considered; nor can there be any doubt that Mr. Davis and his war minister conferred together with regard to this subject.

Captain Selph, speaking of a conversation between himself and Colonel Woods, a staff officer of Jefferson Davis, in regard to the prison at Andersonville, says, "During that conversation I obtained that impression that President Davis had some knowledge of it." "This," he says again, "was subsequent to the receipt of Colonel Chandler's report." To the question, "Would a paper of this kind, on a subject of this magnitude, find its way to the President of the so-called Confederate States in the ordinary way of proceedings?" he answered, "Yes, sir; I think it would."

It will not do to say that this report was buried among the multitude of papers that arrived daily in the war office, or that it lay upon Mr. Seddon's table unnoticed.

Mr. J. B. Jones, private secretary of Mr. Seddon, says that he remembers when the report was received, but only read the headings, enough to see the purport of it, and adds that he thinks it was sent for by the Secretary of War.

Mr. K. I. H. McKean, Chief of the Bureau of War, says that he saw it lying on the secretary's table. He also speaks of a conversation between himself and the assistant secretary of war, Judge Campbell, and in which the report was spoken of, and in which Judge Campbell, speaking of the fearful mortality, remarked, "This looks very bad." Captain Selph also testifies that the report excited general excitement in the department.

But we are not left with this evidence alone. This report was not sent in like ordinary inspection reports, but especial attention was drawn to it by three officials. On the day of its receipt it was submitted to the Secretary of War, as the following indorsement proves beyond all doubt:

"Adjutant and Inspector General's Office, August 18th, 1864.

"Respectfully submitted to the Secretary of War. The condition of the prison at Andersonville is a reproach to us as a nation. The Engineer and Ordnance Department were applied to, and authorized their issue, and I so telegraphed General Winder. Colonel Chandler's recommendations are coincided in.

"(Signed)

By order of General Cooper.

"R. H. Chilton, A. A. and I. G."

The report passed through the hands of R. B. Wellford, a confidential clerk employed in the War Department for his legal abilities, who also made a brief analysis strongly seconding Colonel Chilton, Mr. Wellford's analysis being again indorsed, and the whole laid before the secretary by J. A. Campbell, Assistant Secretary of War, with the following indorsement:

"These reports show a condition of things at Andersonville which call very loudly for the interposition of the department, in order that a change be made.

"(Signed) J. A. Campbell, Ass. Sec. of War."

What more could have been needed, or what more done, to bring authoritatively and strongly before the proper authorities at Richmond the subject of the Andersonville sufferings? Here were an intelligent inspecting officer of high rank, Colonel Chandler; the chief of the inspecting bureau, Colonel Chilton; the chief of the bureau of war, McKean; a confidential clerk, Mr. Wellford, and the assistant secretary of war, Judge Campbell, all pressing in the strongest terms the necessity of an immediate interposition by the department, and not hesitating to declare the prison at Andersonville "a reproach to them as a nation." These appeals might have moved hearts of stone; but, addressed as they were to these representatives of a government based upon wrong and injustice, that had its origin in a treasonable conspiracy to overthrow the best government on the face of the earth, however much they may have moved the hearts of those representatives as individuals, they seem to have still felt it their duty to adhere to a purpose so cruelly and wickedly begun, and thus far so faithfully carried out; and they dared not, or would not abandon, even then, this atrocious conspiracy.

McKean says he is not aware the report was ever acted upon. Captain Selph says the same; and we learn from the testimony that the report remained with the secretary, never having come back to the Inspector General's Department, where it properly belonged, till about the time Mr. Breckinridge succeeded Mr. Seddon, some time in 1865, when Colonel

Chandler having returned and demanded that some action should be taken on the report, or he would resign, it was brought to light and laid before Mr. Breckinridge, who would have acted upon it, as Captain Selph thinks, but for the rapid change of affairs in the Confederacy, and the dissolution of their government soon after.

And here let us diverge a moment, and follow a portion of this remarkable report to the Surgeon General's Office. We find indorsed upon Exhibit No. 24 the following:

"Surgeon was authorized some time since to send his requisitions for supplies directly to the medical purveyors. Not having supplies is his own fault; he should have anticipated the wants of the sick by timely requisitions. It is impossible to order medical officers in place of the contract physicians. They are not to be had at present.
S. P. Moore, Surgeon General."

This is the flippant indorsement of the surgeon general, and the only evidence showing his notice of the condition of things at Andersonville, and that is all that he seems to have done in the matter while Dr. White was allowed to remain in charge of the hospital, which, as described by the surgeons who were on duty with him, seems to have been little less than a dead-house—this Dr. White, whose recklessness, brutality and crime are so closely interwoven with that of General Winder, the prisoner at the bar, and his associate staff officers, that it is hard to discriminate between the cruelty of the one and that of the others. It is strange, truly, that the surgeon general passed over this matter with so slight a notice of it, when we remember that several weeks previously it is shown that he had the whole matter before his office, and took action upon it, which makes him no less culpable than the others we have mentioned. He had called into his counsels an eminent medical gentleman, of high attainments in his profession, and of loyalty to the rebel government unquestionable. Amid all the details in this terrible tragedy, there seems to me none more heartless, wanton and void of humanity than that revealed by the surgeon general to which I am about to refer. I quote now from the report of this

same Dr. Joseph Jones, which he says (Record, p. 4384) was made "in the interest of the Confederate Government for the use of the Medical Department, in the view that no eye would ever see it but that of the surgeon general."

After a brief introduction to his report, and to show under what authority it was made, he quotes a letter from the surgeon general, dated "Surgeon General's Office, Richmond, Virginia, August 6, 1864." The letter is addressed to Surgeon J. H. White, in charge of the hospital for Federal prisoners, Andersonville, Georgia, and is as follows:

"Sir—The field of pathological investigation afforded by the large collection of Federal prisoners in Georgia is of great extent and importance, and it is believed that results of value to the profession may be obtained by careful examination of the effects of disease upon a large body of men subjected to a decided change of climate and the circumstances peculiar to prison life. The surgeon in charge of the hospital for Federal prisoners, together with his assistants, will afford every facility to Surgeon Joseph Jones in the prosecution of the labors ordered by the surgeon general. The medical officers will assist in the performance of such post-mortems as Dr. Jones may indicate, in order that this great field for pathological investigation may be explored for the benefit of the Medical Department of the Confederate States armies.

"S. P. Moore, Surgeon General."

Pursuant to his orders, Dr. Jones, as he tells us, proceeded to Andersonville, and on September 17 received the following pass:

"Andersonville, September 17, 1864.

"Captain—You will permit Surgeon Joseph Jones, who has orders from the surgeon general, to visit the sick within the stockade that are under medical treatment. Surgeon Jones is ordered to make certain investigations which may prove useful to his profession.

Very respectfully,

"By order of General Winder.

"W. S. Winder, A. A. G.

"Captain H. Wirz, Commanding Prison."

When we remember that the surgeon general had been apprised of the wants of that prison, and that he had overlooked the real necessities of the prison, shifting the responsibility upon Dr. White, whom he must have known was totally incompetent, it is hard to conceive with that devilish

malice, or criminal devotion to his profession, or reckless disregard of the high duties imposed upon him—I scarcely know which—he could sit down and deliberately pen such a letter of instructions as that given to Dr. Jones. Was it not enough to have cruelly starved and murdered our soldiers? Was it not enough to have sought to wipe out their very memories by burying them in nameless graves? Was it not enough to have instituted a system of medical treatment the very embodiment of charlatanism? Was not this enough, without adding to the many other diabolical motives which must have governed the perpetrators of these acts this scientific object, as deliberate and cold-blooded as one can conceive? The surgeon general could quiet his conscience, when the matter was laid before him through Colonel Chandler, by indorsing that it was impossible to send medical officers to take the places of the contract physicians on duty at Andersonville, yet he could select at the same time a distinguished gentleman of the medical profession, and send him to Andersonville, directing the whole force of surgeons there to render him every assistance, leaving their multiplied duties for that purpose. Why? not to alleviate the sufferings of the prisoners; not to convey to them one ounce more of nutritious food; to make no suggestions for the improvement of their sanitary condition—for no purpose of this kind, but, as the letter of instruction itself shows, for no other purpose than “that this great field of pathological investigation may be explored for the benefit of the Medical Department of the Confederate armies!”

The Andersonville Prison, so far as the surgeon general was concerned, was a mere dissecting-room, a clinic institute, to be made tributary to the Medical Department of the Confederate armies.

But let me return from this digression. One can hardly believe all these things of a government pretending to struggle for a place among civilized nations, yet, horrible as it seems, the facts can not be resisted.

Do I do injustice to the leaders of the rebellion? Have I

drawn inferences that are unwarrantable? Is it indeed true that these men, high in authority, are not responsible? I think not. Motives are presumed from actions, and actions are louder than words. What was the action of Mr. Davis and his war minister upon these reports? The papers were pigeon-holed in the secretary's office, not even being dignified by being placed upon the regular files in the proper offices, while General Winder, the chief accomplice, instead of being removed immediately and broken of his commission, and tried for a violation of the laws of war, for cruelty, inhumanity and murder—instead of being held up by that government as a warning to others, giving a coloring of justice to their cause, was promoted, rewarded, and given a command of a wider scope and greater power, but still in a position to carry out the purposes of his government toward prisoners of war. History is full of examples similar in character, where a government, carrying out its ends, has selected as tools men not unlike General Winder, and history, faithful in the narrative of the facts, is faithful also in fixing upon the government who employed such persons, and sustained and rewarded them, the responsibility for the acts of their agents. James II had his Jeffreys; Philip II his Duke of Alva; Louis XIV his Duke de Louvois; the Emperor of Austria his Haynau; and Jefferson Davis his Winder.

The closest scrutiny of the immense record of this trial will show that, up to the very close of that prison, there were no steps taken by the rebel government, by General Winder, or by any of the officers of his staff clothed with proper authority, to alleviate in any material particular the great sufferings of that place. You will remember the uniform testimony of the medical officers, as well as of the prisoners who remained there during the winter of 1864-5, that there was no perceptible change in the condition of the prison, and an examination of the hospital register will show that the mortality even was greater during that period, in proportion to the number of prisoners confined, than it was during the months of its most crowded condition. From the prison

journal, kept by the prisoner himself, we find that in September, the mean number of prisoners being seventeen thousand, the deaths were two thousand seven hundred; in October, the mean strength being about six thousand seven hundred, the number of deaths was one thousand five hundred and sixty—nearly one out of every five; in November, the mean strength being two thousand three hundred, the deaths were four hundred and eighty-five; while those remained to the very close—till the prison was broken up, are described by General Wilson and others as having been “mere skeletons”—“shadows of men.” Nor must it be forgotten that the marks of this cruelty were so indelibly stamped upon its victims, that thousands who survived are yet cripples, and will carry to their graves the evidence of the horrible treatment to which they were subjected. The surgeons of our army who treated these shadows of men when they arrived within our lines at Jacksonville and Hilton Head tell you of hundreds who died before they could be resuscitated; of others permanently disabled; of others, on their partial recovery, being started upon their way homeward, and being treated again at Annapolis.

Dr. Vanderkieft, of our army, speaks of the condition of those prisoners while under his treatment at that place. He says: “They were reduced, suffering from chronic diarrhoea and scurvy; some of them in a dying condition; some of them died a few days after they arrived, and those who did recover were obliged to remain a long time in hospital before they were able to return to their homes.”

And with that certainty with which science reasons from effect to cause, oftentimes after describing the condition of the men, as it has been brought out in this testimony, he concludes, “The symptoms and condition of the patients presented cases of starvation.”

Nor must it be forgotten, in the summing up of the cumulative proof of the Andersonville horrors, that numerous photographs of returned prisoners were introduced here, and identified by Drs. Vanderkieft, Balser and others, as repre-

senting cases no worse than hundreds and thousands they had seen. So impressive, indeed, and so strong seemed this evidence of rebel cruelty, that the counsel for the prisoner sought in his cross-examination to show that they were fancy sketches. Are we told that these were improbable, and can not be believed, because it is said Mr. Davis is a good man—not capable of such cruelty? Are we told that no direct order of his is shown, and therefore, notwithstanding all these facts and circumstances narrated, he must be acquitted of all blame? The law governing cases of conspiracy does not require us to show a direct order; circumstances from which guilt may be inferred are sufficient. The rebel chief did not find it necessary to issue direct instructions, nor, indeed, could it reasonably be expected. He was too wary, too sagacious for that.

Michelet relates an anecdote of Louis XV not *malapropos*. “The illustrious Quesnay, physician to Louis XV, who lived in the house of the latter at Versailles, saw the king one day rush in suddenly, and felt alarmed. Madame Du Haurret, the witty *femme-de-chambre*, inquired of him why he seemed so uneasy. ‘Madame,’ returned he, ‘whenever I see the king, I say to myself there is a man who can cut my head off.’ ‘Oh,’ said she, ‘he is too good.’” The ladies’ maid thus summed up in one word the guarantee of monarchy. The king was too good to cut a man’s head off; “that was no longer agreeable to custom; but he could with one word send him to the Bastile, and there forget him. It remains to be seen whether it is better to perish with one blow, or to suffer a lingering death for thirty or forty years.”

Mr. Davis was not capable of being the instrument of death; he was too good to be the keeper of the prison, and withhold from starving men their scanty rations, but he could send them out of his sight, away from the prison in plain view of his residence, into the dense forests of Georgia, and there forget them. If Jefferson Davis be ever brought to trial for his many crimes—and may Heaven spare the temple of justice if he is not—it will not do for him to upbraid and

accuse his willing tools, Winder and Wirz, as King John did Hubert for the death of Prince Arthur; they will turn upon him and say:

"Here is your hand and seal for all I did,
And in the winking of authority
Did we understand a law."

The Law of Nations.

Before advancing farther in the argument, let me define briefly the laws of war, which, it is alleged by the government in its indictment against this prisoner and his co-conspirators, have been inhumanly and atrociously violated. One would suppose that an enlightened conscience would not consult the opinions of writers upon laws or ethics to determine the violation of rules governing civilized warfare with sufficient certainty to condemn the treatment of prisoners at Andersonville; yes, as the averment is traversed by the prisoner, and it is insisted that no violation of the humane principles governing nations in war is shown, I must trespass upon the court a moment before proceeding. In the forum of nations there is a higher law—a law paramount to any rule of action prescribed by either of them, and which can not be abrogated or nullified by either. Whatever the peculiar forms or rights of this or that government, its subjects require no control or power other than is sanctioned by the great tribunal of nations. We turn, then, to the code international, where the purest morals, the highest sense of justice, the most exalted principles of ethics, are the corner-stones, that we may learn to be guided in our duty to this prisoner.

Grotius derived the *jus gentium* from the practice of nations; and, living in an age when the greatest cruelties were practiced in the operations of warfare, his rules, as laid down, often seem to have been the inspiration of barbarity itself rather than law which should govern nations; yet even he, in Books three and four, insists that all acts of violence, which have no tendency to obtain justice or determinate the war,

are at variance both with the duty of the Christian and with humanity itself.

Manning, an author of great force and clearness, says (p. 164):

"At the present day a mild and humane treatment exists with regard to prisoners of war, which is, perhaps, in some degree attributable to the deference paid to the writing of Vattel, who appears to have been the first author who established the true principle upon which prisoners should be treated. He says that 'as soon as your enemy has laid down his arms and surrendered his person, you have no longer any right over his life, unless he should give you such right by some new attempt, or had before committed against you a crime deserving death.' 'Prisoners of war,' he says, 'may be secured, but cannot be made slaves unless for personal guilt which deserves death; nor slain, unless we be perfectly assured that our safety demands such a sacrifice.'"

"It may be remarked, in conclusion, that the same principles which have been appealed to in the preceding chapter afford also a clew to the right treatment of prisoners of war. The usages of former ages proceeded upon the supposition that any violence was allowed in warfare, and that the right of the victor upon the vanquished was unlimited; and that, having the right to deprive his antagonist of life, the captor had a right to impose any treatment more lenient than death upon his prisoner. But we have seen that, so far from the rights of the belligerent being unlimited, the law of nature strictly limits them to such violence as is necessary; that thus, when an antagonist no longer resists, there can be no longer any right to use violence toward him, and that whenever purposes of warfare are not frustrated by the granting of quarter, the belligerent cannot refuse to give quarter without a direct violation of the law of nations, which warrant no farther hardship toward prisoners than is required by the purpose of safe custody and security."

Another author remarks:

"Prisoners of war are indeed sometimes killed; but this is not otherwise justifiable than as it is made necessary either by themselves, if they make use of force against those who have taken them, or by others who make use of force in their behalf, and render it impossible to keep them; and as we may collect from the reason of the thing, so it likewise appears from common opinion, that nothing but the strongest necessity will justify such an act, for the civilized and thinking part of mankind will hardly be persuaded not to condemn it till they see the absolute necessity of it" (Rutherford's Institutes, p. 525).

Kent, in speaking of the barbarous usages of war, kicked and done away with by the progress of civilization, says:

"Public opinion, as it becomes enlightened and refined, condemns all cruelty, and all wanton destruction of life and property, as equally useless and injurious, and it controls the violence of war by the energy and severity of its approaches. Grotius," he says, "even in opposition to many of his own authorities, and under a due sense of the obligations of religion and humanity, placed bounds to the ravages of war, and mentioned that many things were not fit and commendable though they might be strictly lawful, and that the law of nature forbade what the law of nations (meaning thereby the practices of nations) tolerated. Montesquieu," he says, "insisted that the laws of war give no other power over a captive than to keep him safely, and that all unnecessary rigor is condemned by the reason and conscience of mankind. "Vattel," he says, "has entered largely into the subject, and he argues, with great strength and reason and eloquence against all unnecessary cruelty; all base revenge, and all mean and perfidious warfare; and he recommends his benevolent doctrine by the principles of exalted ethics and sound policy, and by illustrations drawn from the most pathetic and illustrious examples."

To the same effect writes Wheaton (p. 586) and Halleck (p. 425 *et sequitur*).

So strongly did the principles here laid down impress themselves upon our government that, during General Jackson's administration, Mr. Livingston, then Secretary of State, instructed Mr. Buchanan, our minister in Russia, to insert in the treaty proposed to be negotiated stipulation,

"In order to restrain citizens or subjects of the one or the other of the high contracting parties respectively from infringing any of the known rules of modern warfare;" and, among other things, mentions, "for injuries offered to the bearers of flags of truce; for the massacre of prisoners who have surrendered; for the mutilation of the dead; for other breaches either of this treaty or of the laws of nations; for preserving peace or lessening the evils of war."

The object of this, Mr. Livingston said, was

"To express a national reprobation of the doctrine which considers a state of war as one of declared hostilities between every individual of the belligerent nations respectively. . . . To massacre an unresisting and unarmed enemy, to poison his provisions

and water, to assassinate a prisoner, and other similar acts, are universally acknowledged to be breaches of international law, and to justify retaliation and an increase of the horrors of war."

It would seem that these teachings, so long recognized, so long practiced by civilized nations, ought to have found some advocate even among the councils of treason. Whatever the form of government may have been to which the leaders of the Confederacy so-called aspired, whatever of wrong and injustice they sought to embody in their system, with whatever of oppression and tyranny they might grind down their subjects the moment they asked a place among nations they were bound to recognize and obey those laws international, which are, and of necessity must be, applicable alike to all. With what detestation, then, must civilized nations regard that government whose conduct has been such as characterized this pretended Confederacy? An ordinary comprehension of natural right, the faintest desire to act on principles of common justice, would have dictated some humane action, would have extorted from some official a recognition of international rules of conduct.

It was not retaliation, for they had the example of our government in sending to their homes on parole whole armies that had been captured; it was not punishment, for these unfortunate prisoners had been taken in honorable battle; it was not ignorance of the law, for they had constantly with them all those great rights just quoted; and if these failed to convince, they could have found recorded back of these, "If thine enemy hunger, feed him;" and still farther back they might have found an example worthy of imitation which I can not refrain from here giving. A large number of Syrians had been, by a cunning piece of strategy, taken captives, and became prisoners of war, whereupon the following dialogue occurred: "And the king of Israel said unto Elisha, when he saw them, My father, shall I smite them? shall I smite them? And he answered, Thou shalt not smite them; wouldest thou smite those whom thou hast taken captive with thy sword and with thy bow? Set bread and water before them,

that they may eat and drink, and go to their master. And he prepared great provision for them; and when they had eaten and drunk, he sent them away, and they went to their master'' (2 Kings, ch. vi).

No, gentlemen, it was neither retaliation, punishment, nor ignorance of the law; it was the intrinsic wickedness of a few desperate leaders, seconded by mercenary and heartless monsters, of whom the prisoner before you is a fair type.

Cruelties Practiced Towards Prisoners.

Thus far we have not pretended to enter with any particularity into the questions of the cruel treatment of prisoners. There may be two objects, or two reasons for, at this time, dwelling more in detail upon the conduct of the prisoner. These are, first, to connect him more certainly with the conspiracy, and second, to enable us more understandingly to examine the second charge. Here, as at other points in the argument, I desire only to present the evidence, avoiding all embellishment and all augmentation, for this case must be decided upon the facts proven, and not the coloring of counsel.

I cannot hope to recapitulate all the facts bearing upon this point, as it will be remembered that each day's record bears witness to an accumulation of horrible details which there can be no necessity for now repeating, and to give all of which would require almost the entire proceedings to be duplicated. We may, however, perhaps to some purpose, present briefly the proofs of each phase of cruelty alleged.

Stopping of Rations.

It will be remembered that upon the first day of the arrival of the prisoner at Andersonville and of his taking charge of the prison, the rations of the whole camp were stopped for no other reason than to facilitate him completing the rolls and roster of the prisoners. The testimony on this point is so widespread, and comes from so many sources—

from witnesses on the defense as well as from witnesses on the part of the government—that the fact cannot be denied. Nothing but the strongest necessity, after all means had been exhausted, could justify a measure of this character, for no other purpose than that alleged in defense, merely to secure a correct account of the prisoners. An intelligent and humane mind can conceive of very many methods that would suggest themselves before a resort to such an extreme measure as this. There was an impassable stream, made so by the swamps bounding it, running through nearly the center of the stockade. At that time there was only about 8000 prisoners in the stockade. If it was merely the desire of the prisoner to correct his rolls, and not to inflict a cruel punishment upon the prisoners, many of whom were then reduced to mere skeletons by the deprivations and exposure to which they had been subjected at Belle Island and in other prisons, what was there to prevent him from placing them all on one side of that stream and transporting them, counting them as they crossed the bridge to the other side? This is one of many simple means that could have been resorted to without depriving the prisoners of any part of their scanty rations. But as we advance in the testimony and follow this prisoner through the many succeeding months of torture inflicted by him, we cannot resist the conclusion that this was intended only as the beginning of greater sufferings and greater punishment. We find also, from the concurrent testimony of all the witnesses, both for the prosecution and the defense, that a rule was daily established and adhered to throughout, stopping the rations of a whole squad of 90, or a division of three nineties, whenever, upon the roll call, it was discovered that any one man of that squad or division was absent and could not be accounted for. This occurred times too numerous to mention, as we learn from the testimony of many witnesses. The same witnesses have also informed us that it was absolutely impossible, owing to the peculiar circumstances which were themselves the result of their treatment and the result of the common design to de-

stroy, to prevent an unbroken number at roll call or give satisfactory excuse for the absence of particular prisoners.

We know that diarrhoea and dysentery prevailed to an alarming extent; that prisoners were compelled to go to the stream for the purposes of defecation; that often they would fall by the way or be compelled to remain at the sinks, or, owing to their sickness and debility and the crowded state of the prison, would be totally unable to return to their quarters. This the sergeants could not and did not always know, or if they did, and gave it as an excuse, it was not received as satisfactory. The order of the prisoner in such cases was to stop the rations of the whole 90 as a punishment, thus imposing undeserved suffering—will not say upon those who were classed as offenders, but who were not such, because they were governed by an overpowering necessity. All the cases were most cruel and inhuman violations of the laws of war, so well defined, and in violation also of every principle of justice and humanity. You will remember that the rations of the whole stockade were stopped July 3 and 4, for the alleged reason that information had been given of numerous prisoners intending about that time to “tunnel out of that horrible pen,” the order being that no rations should be issued to the camp till the “culprits,” as they were called, could be found and given up. Many of the witnesses told you they had been promised double rations on Independence Day, and they were expecting to celebrate the occasion. The 3d of July came and no rations; the 4th came and no rations; and instead of jollification and feasting, starvation and suffering were theirs; instead of a universal jubilee they were all compelled to turn spy and inform on their own comrades, who were doing no more than their duty required of them to their government, or submit to further torture of their prison-keeper. Who can know the consequences of such rigorous treatment? Who shall say that scores of these men, thus shut off from even their inadequate supplies, did not owe their deaths directly to the hands of this prisoner?

The Dead-Line.

While treating of the rigors of prison life at Andersonville, let us here notice for a moment the establishment of the dead-line. Without stopping to dwell upon the fact that the strip twenty feet wide extending around the entire enclosure, needlessly taken from the area allotted to the prisoner, was of itself a cause of great suffering, as it necessarily deprived the prisoners of that much room, let us notice to what extent it was resorted to as a means of death to our soldiers.

The order was absolute and imperative, and came directly from the prisoner at the bar to his subalterns and the guards on duty at the stockade, that any prisoner of war crossing the dead-line should be shot.

I do not pretend to claim that the mere establishment of such a line, or the orders given with regard to it, of themselves constituted crime, or of themselves shown any criminal intent, for we know as soldiers that lines are drawn around encampments beyond which soldiers are not allowed to pass; that there are picket lines to armies which cannot be penetrated except in violation of orders; that where, as in this case, a prison is overcrowded, some such measure may be necessary for the safety of the prisoners; but what we complain of, and what we insist was a barbarous violation of every principle governing in like case, was the utter recklessness with which these orders were enforced—the shooting of prisoners who were not in any way attempting to escape, but who, by accident in that crowded place, might happen to be pushed upon that line, or who might reach under it for a piece of bread, or to regain any little articles of their own which they had accidentally dropped, or who were attempting at the stream to reach under this line to obtain a cup of water, when all outside of it was reeking with impurity—that in cases of this kind, with the full knowledge and approval of the prisoner, and not only that, but by his direct orders, these hapless soldiers were fired upon.

It will be remembered that during the whole course of this trial no instance has been shown where a soldier confined in the Andersonville stockade was shot at the "dead-line" while making any attempt to escape; while the cases are numerous—some of which will be hereafter noticed under charge second—where prisoners wholly unoffending were shot.

The law governing in cases of this kind is as well defined as the law upon any other point; and it will be seen upon an examination that nothing would justify a soldier on duty in shooting a prisoner under his charge, unless the prisoner was attempting to escape, or the guard had reasonable cause to believe that that was his purpose.

Every act of shooting which resulted in death, under the orders given in this instance, was murder on the part of the officer giving the order, and of the soldier executing it.

A case in point is given in Scott's Dictionary:

Ensign Maxwell was tried in 1807, before the High Court of Justiciary of Scotland, for the murder of Charles Cottier, a French prisoner of war at Greenlow, by improperly ordering John Low, a sentinel, to fire into a room where Cottier and other prisoners were confined; and so causing him to be mortally wounded. Maxwell was in charge of 300 prisoners of war; the building in which they were confined was of no great strength and afforded some possibility of escape; to prevent which, the prisoners being turbulent, an order was given that all lights were to be put out at 9 o'clock; if not done at the second call, the guard would fire upon the prisoners, due notice having been given them. On the night in question there was a tumult in prison. Maxwell's attention being drawn to it, he observed a light burning beyond the appointed hour and twice ordered it to be put out; this order not being obeyed, he directed the sentry to fire, which he did, Cottier receiving a mortal wound. Maxwell was found guilty, with recommendation to mercy, and was sentenced to nine months' imprisonment. It is laid down . . . a book of authority, that if a ship's sentinel shoot a man because he persists in approaching the side of the vessel when he has been ordered not to do so, it will be murder unless such an act be for the ship's safety. The case of *Rex v. Thomas* sustains this opinion.

The case of Maxwell is similar in many respects to instances of shooting on the dead-line given in evidence, and bears directly upon the guilt of the prisoner at the bar; the

case of *Rex v. Thomas* bears directly upon the soldier in the reckless carrying out of the orders given with regard to the dead-line.

I would fail in my duty if I were not to notice, in this connection, a feature of this "dead-line" which has been indignantly denied by the counsel for the prisoner, but which is too strongly proved for us to resist belief; and that is the inducement held out to the guards by the promise of a furlough to every one who should shoot a Union prisoner at the "dead-line."

The evidence of this is both direct and circumstantial. Some of the witnesses heard the prisoner at the bar speak of it as a fact; I shall not repeat the language he used on those occasions, as it was profane and vulgar; others give the declarations of the guards at the time of shooting prisoners, which was properly admitted by the court as a part of the *res gestae*; still others speak of its being the custom almost universally to relieve a guard soon after his having shot a prisoner; one of them, it will be remembered, speaks of the guard calling for the corporal immediately upon shooting a prisoner, and states that the corporal came, went away again, and in a few moments returned with a sentinel who relieved the one then on the post.

The rebel soldiers who were here as witnesses testify that although they never knew of a case where a furlough was granted for that cause, yet it was talked of among the troops at the post. An examination of the record will show that at least forty witnesses have testified to these facts, the name of whom it is hardly necessary to mention. When we remember the horrors of that place and the many modes of cruelty resorted to, the systematic starvation of prisoners, the recklessness of life and the absence of all humanity in the conduct of the prison, it is not difficult to believe even this to be true.

It is said for the defense by officers who were on duty at Andersonville that they never knew or heard of a case where a soldier received a furlough for this cause.

This may be true, and the fact remain as claimed. The officers who testified were not the officers in all cases who granted furloughs; some of them were required to approve, but none of them had this matter of furloughs in their hands. They did not pretend to deny that such furloughs might have been granted without their knowledge; they did not pretend to deny that in cases of this kind the reasons for granting the furloughs would not be given upon paper; they did not pretend to deny that soldiers procured furloughs through the influence of the prisoner; indeed they said that under the organization of that prison, even officers of the rank of colonel, on duty with the troops, received their leaves of absence through the prisoner, who was himself but a captain.

This negative evidence—the only evidence presented by the defense—cannot explain away circumstances so plainly pointing to guilt.

May not the reward thus given explain to this court the fact that in no instance was a prisoner of war shot in the act of escaping or under circumstances justifying the sentinel in supporting that to be the intention of the prisoner shot; and may it not explain the criminal recklessness in this particular shown throughout the whole trial?

The Stocks.

There was another mode of punishment instituted at that prison and carried on under the direction of this prisoner which we must notice; and that is the stocks.

These implements of torture were of two kinds: in the one the prisoner was lashed to a wooden frame-work, his arms extended at right angles from his body, and his feet closely fastened; and in this condition, unable to move either hand or foot, he was compelled to stand erect, or, as was sometimes the case, to lie upon the ground with his face turned upwards, exposed to the heat of the sun and to the rain; in the other the prisoner's feet were fastened in a wooden frame, and so much elevated above the center of gravity that it was

difficult for him to sit, and he was therefore compelled to lie on his back with his face exposed to the sun.

This was a favorite mode of punishment with the prisoner. Witnesses have given very many harrowing and frightful pictures of its tortures. Martin E. Hogan tells us:

I escaped from the prison about the 8th of October, and was captured about two days afterwards and brought back. After some of the most profane abuse from Captain Wirz that I ever heard from the lips of man I was ordered to the stocks. I was fastened at the neck and ankles and left for 68 hours without food, except such as was stolen to me by my paroled comrades.

J. R. Achuff, a prisoner who had escaped by bribing a guard, and who was afterwards caught by dogs and returned to Andersonville, says:

I was taken to Captain Wirz. He ordered me into the stocks. I was put into the stocks with my hands fastened by a board and my arms stretched out. I was kept in the hot broiling sun for 36 hours. I had nothing to eat, and but two drinks of water. When I appealed to Captain Wirz about it, he told me to dry up or he would blow my damned brains out, that I deserved to be hung. After I was taken out of the stocks I was ironed; I had shackles fastened around each leg, an iron ring and a bar of iron between my legs.

Thomas (Joseph) Adler says:

I know of one man who was lying senseless in the stocks for three hours before they would take him out. The order was to leave him in till Captain Wirz ordered him taken out. The captain was nowhere to be found, and the guard did not dare to take him out, and he lay five or six hours in the stocks until Captain Wirz came and they took him out. He was in there for trying to make his escape.

Thomas N. Way, having attempted to escape, was captured by dogs and brought back, and was taken to headquarters. He says:

Captain Wirz said, "I am going to take care of you this time; I put you in the stocks for four days."

He was so confined, and in answer to the question, "Explain what was the effect of the stocks upon you?" he says:

It was very severe. I was laid on my back with my feet and

arms in the stocks so that I could only move my head. My face was right upwards to the sun. I was four hours in and one hour out during the 24 hours.

William M. Peeble, a rebel employe at Andersonville, says :

I was passing around one day during a hard storm, and I saw a prisoner in the stocks. He seemed to be near drowned. I rode up and put an umbrella over him. I passed up to Captain Wirz's headquarters, and told him the prisoner was there and might drown. He remarked, "Let him drown," using an oath. His words, as well as I can remember, were, "Let the damned Yankee drown; I do not care." In a few minutes afterwards some one from his headquarters went down and released the prisoner.

This is the testimony of a few, which is confirmed by the stories of many others. This mode of punishment was resorted to on the most trivial occasions, and for the most trivial offenses, usually, however, in cases where prisoners had attempted to escape, or had made their escape and been recaptured.

Is there any defense for this barbarous method of punishment? Was not the punishment wholly out of proportion to the violation of prison rules? Can it be defended upon any known laws of war? When Colonel Chandler, a rebel officer, was put upon the stand, he was asked this question :

In your report you speak of paragraph 4 of the rules submitted by Captain Wirz which you did not approve. Can you tell us what that paragraph was? His reply was:

I cannot speak positively as to that; my impression now is, that it had reference to punishing men who attempted to escape. I remember having a conversation with General Winder on this subject, and calling his attention to the fact that it was the duty of a soldier to his country to escape if he could, and that it was his (Winder's) duty to keep him; to prevent his escape, but not to punish him for doing his duty; and he concurred in that.

Colonel Chandler stated what all writers lay down as the law upon this subject. (See Woolsey's *International Law*, Sec. 128; Heften, 129; Polson's *Prin. of Law of Nations*, 42.) The prisoners, then, in attempting to escape, were not committing an offense, but were in the exercise of a duty they

owed, not only to their own self-preservation, but to the government they served; and the infliction of infamous, disgraceful and cruel punishment for the exercise of this right, was as illegal as it was barbarous. It would have been lawful to shoot down a prisoner of war in the act of escape, or in the act of trying by force or stealth to pass the guard; but having escaped and being recaptured, and in the power of his captors, that moment it was the captor's duty to protect and save him from violence, rather than inflict upon him such tortures as we have described.

The Chain Gang.

Another mode of punishment, not less cruel and infamous than the stocks, was the chain-gang, and the use of balls and chain.

Jaspar Culver describes this relic of barbarism. He says:

I saw 12 men in the chain-gang, chained together, under guard. They came down to the bakery to wash. I gave them some water in pails to wash, and also carried their rations to them from the bakery. I saw them almost every day for over a month or six weeks; they were together.

I may remark here that the witnesses concur in the statement that the chain-gang was a permanent thing, but that the men composing it were changed from time to time, some being taken out and others substituted. The witness continues:

They were chained in two files, with a 32-pound ball chained to each outside leg of the file on the right side, and on the left leg of the left file; then they were chained to what seemed to be two 100-pound balls—at least they called them 100-pounders. There were three men in each file, with chains attached to each one of these 100-pound balls. They had also a band of iron riveted around each man's neck, and a chain attached from one man to another. If one man moved, the whole twelve had to move.

The prisoners were thus confined, for offenses similar to those before mentioned, often, as we learn, when sick, and at all times with a total disregard of any precautions against exposure, or any provision for their subsistence.

The mind needs no aid to discover at once the severity of such punishment, nor does the conscience need to be quickened by being reminded of the law in order to condemn this shockingly brutal practice.

Other Punishments.

Another means of punishment, not greatly differing from this, was the use of the ball and chain, which was a sort of adjunct to the chain-gang, and a part of it, and need not be dwelt upon.

There were still other modes of punishment and tortures which must not be overlooked; these were bucking and gagging, tying up by the thumbs, flogging on the bare back, and chaining to posts and trees.

The first of these is inflicted by fastening a stick in the mouth so as to keep the mouth constantly open; the hands are then tied together and placed over the knees, and a stick is passed over the arms and under the legs, bending the victim almost double.

Thomas N. Way, after describing this punishment, says:

The result is that you cannot speak. It is pretty severe punishment. I have seen a hundred men or more punished in that way.

I know what Wirz did to myself. I was in the stocks eight or ten days. I was bucked and gagged a day and a half. I was tied up by the thumbs for fifteen minutes because I was sick, and unable to fall in to roll call. This was by order of Captain Wirz. I was taken and held up with my arms elevated; a guard took me on each side; I could not stand myself; they tied my thumbs by strings, and then let me hang with my feet some distance from the ground, the whole weight of my body on my thumbs. I could not use my hands for two months afterwards.

Several instances of flogging have been testified to. Captain Honeycutt, a rebel soldier on duty at Andersonville, says:

I saw one of them (the prisoners of war) whipped; I did not count the strokes, but to the best of my knowledge, it was about twenty-five or thirty; he was a white man; I saw a man from Captain Wirz's quarters, who took him out and whipped him.

He was a prisoner who had attempted to escape by blackening his face, and passing out of the stockade among a squad of negro laborers. This person, Vincentia Bardo, was subsequently put upon the stand as a witness for the defense. The object of the counsel for the prisoner in calling him was, it is supposed, for the purpose of discrediting a government witness, who said he thought the prisoner himself applied the lash, or gave the order. Bardo, however, says that after his capture he was sent down to the front of the "Dutch Captain's" quarters. He then states:

A lieutenant, I don't know his name, asked me what I was doing around there. . . . Then he took hold of me, and took me and put me in the stocks; the stocks came around my neck, and my hands were stretched out; he gave me 25 lashes on my back. When I was taken out of the stocks I was put in the stockade for four hours; then put in the stocks again for four hours, and then I was put in the stockade again.

It is immaterial who inflicted the lashes, the fact not being doubted that it was done by the prisoner's orders, as we learn from other witnesses. It will be remembered that two other prisoners, colored soldiers, were given by orders of the prisoner 250 lashes each on the bare back. One of these men was punished because he refused to work in the intrenchments, owing to sickness, resulting from a wound he had received in battle, and the other for alleged offense of forging a pass. Whipping as a punishment was long since abolished in the navy by act of Congress, and prohibited in the army by general orders. That it should have been revived at Andersonville is not strange when we reflect upon the many and more severe modes of punishment adopted.

The last in the catalogue of punishments which we shall notice here is described by the witness De La Baume, and the incident occurred in the month of December, 1864. Speaking of one of his fellow-prisoners, he says:

I saw him tied with an iron collar around his neck to a post. As I was passing I heard this man say something to Captain Wirz, whereupon Captain Wirz said, "One word more and I will blow your damned brains to hell," holding a pistol towards his head.

The witness then presented to the court a pencil sketch of the scene, representing the guard with drawn sabre and the prisoner with his pistol in his hand. The evidence presents many phases of these different modes of punishments, which I will not torture myself or you by here presenting. It was a system, not only illegal and in violation of all laws of war, but cruel, inhuman and damning to its perpetrators. In no instance given in this record was there a provocation for a single act of this kind. It will not do to say that they are legalized by State laws of the South, in the case of criminals, it will not do to say that the discipline of that prison required rigors of this kind. The relations sustained by prisoners of war to their captors present a case quite different from either of those mentioned. In the barbarous ages, we learn from Vattel and Grotius that prisoners of war became the property of the captors and could be sold or put to death at his will, but the progress of civilization modified this manifestly unjust rule, substituting those already referred to. From these it will be seen that the relation is a fiduciary one, imposing an obligation upon the captor wholly at variance with such cruelties as have just been recounted. A prisoner of war does not become a criminal until he commits a crime, and the captor has no right to inflict upon him the punishment of criminals until he shall have committed a crime, and not then until after trial and conviction before a proper tribunal.

Use of Hounds.

In this connection, as further illustrating the barbarous treatment of our soldiers and the cruelty of the prisoner at the bar, as well as systematic violation of the laws of war at Andersonville, it seems proper to notice the method adopted for recapturing prisoners.

The court will remember that the counsel for the prisoner laid great stress on the fact that a law existed in the State of Georgia authorizing the use of dogs for the capture of fugitive slaves, and attempt was made to prove by Judge Hall,

for the witness who testified to this fact, that a justice of the Supreme Court of that State had made a decision sustaining the law. The court very properly excluded the evidence, but I, will give the prisoner the benefit of the decision. It was by Justice Lumpkin, and is another evidence of the extent to which a naturally strong mind may be warped and turned from a strict view of justice when compelled to square it with a system of slavery. The case referred to is *Moran v. Davis*, (18 Ga. Rep.). The facts were substantially these: A negro ran away, was pursued by dogs, and in trying to escape from them plunged into a creek and was drowned. The slave had been hired to the man who pursued him, and the owner brought suit for the value of the negro. The court below held "that the hirer or overseer had no right to chase the slaves with such dogs as may lacerate or materially injure the slaves; should he do so he will be responsible to the owner for all damage that may ensue to the slave." Exceptions were taken to the rulings of the court, and on appeal Justice Lumpkin reversed the decision, remarking, "The South has already lost 60,000 slaves, worth between 25 and 30 millions of dollars. Instead, therefore, of relaxing the means allowed by law for the security and enjoyment of this species of property, the facilities afforded for its escape, and the temptation and encouragement held out to induce it, constrain us willingly or otherwise to redouble our vigilance and to tighten the cords that bind the negro to his condition of servitude, a condition, he adds with a flourish of rhetoric and a shameful distortion of scripture, "which is to the last, if the apocalypse be inspired, to the end of time."

Unfortunately for the argument of counsel, prisoners of war are not property, neither are they slaves, and with all his adroitness he can hardly torture this case to his purpose, especially in view of the fact that the decision was given in support of a relic of the dark ages now happily passed away.

When two nations are at war, neither has a right to prescribe a code of laws for the other; a moment's reflection will show the injustice of such a thing; but both are governed by

a higher law than that prescribed by either—that is, the law governing civilized nations; and it seems to me that no refinement of reasoning is necessary to show that Judge Lumpkin's decision, given in the interest of barbarism, is plainly in violation of the rules of enlightened civilization. Dogs were kept at Andersonville from the organization to the close of the prison, and of this the rebel government had notice from several sources. Dr. Eldridge reported it, as we learn from Exhibit No. 15, A. The prisoner also reported it, as we learn from Exhibit No. 13. Mr. Benjamin Harris and a man named W. W. Turner were employed and paid for this despicable business. The first named, a citizen, was a professional negro catcher who kept a pack of hounds for that purpose; the other was a detailed soldier, detailed by order of General Winder, and paid as an extra duty man. (See testimony of Colonel Fannin, Captain Wright and Ambrose Spencer.) These hounds were fed with provisions taken from the cook-house and furnished the prisoners of war, taken, too, from the scanty supply issued by the commissary for those prisoners. (See testimony of Jasper Culver.) They were mustered into the military service of the rebel government the same as cavalry horses. (See testimony of Colonel Gibbs, commandant of the post at Andersonville.) They were of two kinds, "tracking hounds" and "catch dogs," and if anything were wanting to show the deliberate purpose to injure prisoners by resorting to this means of capture it would be found in the presence in these packs of hounds of "catch dogs," which are described by many as fierce and bloodthirsty. If there had been no desire to injure, why were they used at all? They have none of those qualities peculiar to the tracking; they run only by sight, and, as has been testified to, always remained with the pursuer until approaching a prisoner. The tracking hounds would have been sufficient to discover the prisoners, and as they are usually harmless, would have served the purpose of the pursuer and at the same time inflicted no injury upon the pursued. The evidence, however, convinces one that this was only another

means of putting prisoners of war out of the way. The prisoner at the bar frequently accompanied Harris and Turner in their chases after prisoners, and, as we shall see hereafter, gloated over the pain inflicted by those bloodthirsty beasts. Cannot we safely stop here and ask that the prisoner at the bar be recorded as one of the conspirators? I know that it is urged that during all this time he was acting under General Winder's orders, and for the purpose of argument I will concede that he was so acting. A superior officer cannot order a subordinate to do an illegal act, and if a subordinate obey such an order and disastrous consequences result, both the superior and the subordinate must answer for it. General Winder could no more command the prisoner to violate the laws of war than could the prisoner do so without orders. The conclusion is plain, that where such orders exist both are guilty, and a *fortiori* where the prisoner at the bar acted upon his own motion he was guilty. You cannot conclude that this prisoner was not one of the conspirators because he is not shown to have been present and to have acted in concert with all the conspirators. If he was one of the conspiracy to do an illegal thing, it matters not whether he knew all his co-conspirators or participated in all that they did. It is not necessary to prove any direct concert or even meeting of the conspirators. A concert may be proved by evidence of a concurrence of the acts of the prisoner with those of others, convicted together by a correspondence in point of time and in their manifest adaptation to effect the same object. (Starkie's Evidence, pp. 323, 324.) These rules of law place beyond a doubt the guilt of the prisoner, for in every respect there is plainly discoverable "a correspondence of time and a manifest adaptation to effect the same object," in all that he did; and these principles apply not only to the prisoner, but to all others on duty at Andersonville, whose acts concurred with those of others of the conspiracy and were adapted to effect the same object.

The prisoner at the bar appeals to you through his letter of May 7th, directed to General Wilson, and asks, "Shall I

now bear the odium (and men who were prisoners here have seemed disposed to wreak their vengeance upon me for what they have suffered) who was only the medium or I may better say the tool in the hands of my superiors." Strongly as it may strike you that strict justice would require the punishment of the arch-conspirator himself; strongly as this wreck of a man, with body tortured by disease and over whom already gather the shadows of death, may appeal to your sympathies, you cannot stop the course of justice or refuse to brand his guilt as the law and evidence direct. While I would not dignify the chief conspirators in this crime without a name connected as they are, must share the same fate before the bar of a righteously indignant people. Nothing can ever separate them, and nothing should prevent their names going down to history in common infamy.

I have said that Phillip II. had his Alva, that Jefferson Davis had his Winder; I might add that the Duke of Alva had his De Vargas, and Winder his Wirz. As the Duke of Alva rises out of the mists of history the agent of a powerful prince, so Winder stands out with fearful distinctness no less perfect for his willing obedience to the government he served than for his skill to devise and ability to select agents as capable to execute the refinements of cruelty. Nor does the parallel cease here; has not history repeated itself in making Wirz a man cast in the same mould as the infamous De Vargas, a hand to execute with horrible enthusiasm what his superior had the genius to suggest?

Motley tells us in his "Rise of the Dutch Republic, Vol. II, p. 140. of these men Alva and De Vargas, whose spirits, after the Pythagorean theory, seemed to have centuries afterwards infused themselves into the bodies of this prisoner and his immediate superior, Winder. He says of the subordinates of Alva:

Del Rio was a man without character or talent, a mere fool in the hands of his superior; but Juan de Vargas was a terrible reality—no better man could have been found in Europe for the

post to which he was thus elevated. To shed human blood was, in his opinion, the only important business, and the only exhilarating pastime of life.

He executed the bloody work with an industry which was almost superhuman and with a merriment which would have shamed a demon; his execrable jests ringing through the blood and smoke and death cries of those days of perpetual sacrifice. There could be no collision where the subaltern was only anxious to surpass an incomparable superior.

There are other conspirators in this crime whom we must notice further than has yet been done, before coming to charge second; these are Surgeon Isaiah H. White and Surgeon R. R. Stevenson. Surgeon White, as we have already seen, went to Andersonville under orders from the rebel war department, and was there at its organization. It is he who was responsible for the erection, management and condition of the hospital there, which Dr. Jones said did not deserve the name, and to enter which as a patient was almost certain death. It is he to whose account stands recorded the deaths of over 9,000 prisoners; whose neglect, malpractice and prostitution of his abilities as a surgeon make him no less a criminal in the light of testimony showing a criminal intent than if he had deliberately killed those who were placed in his charge; and of his criminal intent there can scarcely be any doubt when it is remembered that in his house, and in his presence, letters directed to Union prisoners were opened, rifled of their contents, and their messages of love turned into "merrymakings," as we learn from the evidence of Lewis Dyer. It was he who often spoke of the mortality with shocking levity, and who uniformly neglected to take any notice of the suggestions made by the surgeons in their morning reports to him. It was he who drove Major Boyle out of the hospital in the stockade, and refused to allow his wound to be dressed because he was an officer of a colored regiment. It was he who established the system, and enforced it by orders, of practicing by formulas and numbers, which, in the opinion of Drs. Rice, Head and Thornburgh was the sheerest

empiricism. It was he who kept in his employment as hospital steward, one Dr. Kerr, who in the disguise of a federal soldier robbed the patients in the hospital, and was a man of a notoriously cruel and brutal nature; and it was he with regard to whom Surgeon General Moore remarks in his indorsements, "not having supplies is his own fault; he should have anticipated the wants of the sick by timely requisitions;" and who, upon the recommendation and by the order of this same surgeon general, in the face of the fact of his incompetency, was less than two months afterwards assigned to duty as surgeon-in-chief of all the military hospitals east of the Mississippi, and who departed from Andersonville in company with and on the staff of General Winder, rewarded rather than punished, as was this general, for his faithfulness in carrying out this conspiracy.

With all Dr. White's incompetency, and, as we learn from Dr. Bates' testimony, stepping into the shoes of his predecessor without instituting a single reform or showing himself in any way his superior, was Surgeon R. R. Stevenson. Further than this, indeed, he showed himself not only willing to perpetrate the evils that existed under Dr. White, but he showed himself also wanting in the principles of honesty. It is not necessary to enter into the details of his administration. We learn enough of him through witnesses, Drs. Bates, Roy, Flewellen, Thornburgh and Rice.

The evidence of these witnesses and others shows that he refused to distribute bed-sacks and bedding to the suffering patients for the alleged reason that they would be destroyed; that he refused to allow Dr. Rice to go home and bring vegetables that were rotting in his garden for the use of the sick, or to send a person for them; that he constantly converted to his own use and loaded his own private table with viands sent for distribution among the sick; that he misappropriated the hospital fund, which accumulated by commuting in money a ration for each patient, at the rate under his administration of about two dollars per ration, and to increase which we learn, from the evidence of Dr. Thorn-

burg, he caused to be entered upon the hospital register the names of hundreds of persons as having been treated in the hospital who really died in the stockade without any medical treatment whatever; and for his glaring malfeasance and crime he was compelled to leave that post.

Vaccination.

The record so far presented cannot fail to excite a feeling of horror and disgust; but there is still another and a very important feature of the case yet to be brought out, namely, the inoculating of prisoners of war with poisonous vaccine matter.

This, I believe, is the only allegation set out in the charge not yet noticed, but which, when compared with other specific acts of cruelty, seems to me the most revolting in the whole catalogue.

Before speaking particularly of the effects of this alleged precautionary action on the part of the surgeons in charge, who it seems acted under orders from the rebel authorities through Winder and the prisoner, I would call your attention to the evidence, so that no man may say that this averment is false.

The evidence on this point proves distinctly one of two propositions, either of which fixes on the persons responsible a most atrocious crime; there are 1. That the vaccine matter used was poison and known to be such; or, 2d. That it was knowingly and purposely applied under circumstances which made it almost certain that death would ensue.

The defense has set up that impure vaccine matter was used throughout the South, with similar consequences, and several medical gentlemen of the rebel army were called to prove that fact, among others Dr. Flewellen and R. Castlen. But it will be remembered that their experience and their knowledge was limited to observations in the year 1863, and they distinctly told you that orders were issued directing the surgeons upon the discovery of these fatal consequences to

cease the use of the virus. How then can the counsel presume to use this circumstance as a defense to the injurious results arising from the use of this spurious matter, as late as 1864, with the full knowledge of a year's practice and year's experience before them?

I would rather think that the Andersonville prisoners were made the victims of this experience, not, it may be, with the knowledge of many of the surgeons on duty at that place—for some of them seem to have been conscientious men—but doubtless with the knowledge of the surgeons in charge, their chief at Richmond, the prisoner at the bar, and his immediate chief.

This evidence of the soldiers on this point is homely and blunt, but it enables one to determine with some certainty that the effects described by them were by no means the ordinary results of vaccination.

Oliver B. Fairbanks says:

Large sores originated from the effects of poisonous matter; they were the size of my hand and were on the outside of the arms and also underneath in the arm-pits. I have seen holes eaten under the arms, where I could put my fist in; these cases were in the stockade.

I was at the south gate one morning when the operation was being performed. While I was standing there looking on, one of the surgeons came to me and requested me to roll up my sleeves, that he was going to perform the operation on me. I told him I could not consent to such an operation. He called for a file of guards and I was taken to Captain Wirz's headquarters. Arriving there one of the guard went in and directly Captain Wirz came out of his office saying he wanted to know where that God-damned Yankee son of a bitch was. I was pointed out to him as being the person; he drew his revolver and presented it within three inches of my face, and wanted to know why I refused to obey his orders.

I told him, "Captain, you are aware that the matter with which I would be vaccinated is poisonous, and therefore I cannot consent to an operation which I know will prove fatal to my life." The prisoner flourished his revolver around and stated that it would serve me right; the sooner I would die, the sooner he would get rid of me. I was kept in chains, and after a punishment of two weeks finally consented to the operation. As soon as it was performed, I went immediately to the brook and took a piece of soap and rubbed the spot and wrung it, and thereby saved myself.

As confirmatory of Fairbanks' statement, that the prisoner interfered in this matter of vaccination, and as tending to show that there was criminal design, I quote the evidence of Frank Maddox. In reply to a question whether he ever heard the prisoner give orders in regard to vaccination, he says:

I heard him tell the doctor at the gate to vaccinate all those men; they were talking about having the small-pox there; the doctor told him that according to his orders he would do it.

They were laughing over it one day; the doctors had been examining and had cut some bodies open, had sawed some heads open; in some cases a green streak from the arms had extended to the bodies; they were laughing about it killing the men so.

George W. Gray says:

It affected their arms; the sores began just to rot around and to eat in until it got to the bone; they generally lost their arms; a great many of the men who had been vaccinated had their arms amputated.

John M. Yonker, who was engaged in burying the dead, in speaking of the amputated arms which were constantly sent to the graveyard to be buried, says:

I noticed it daily; the great part of it originated from vaccination; the sores were mostly right here (on the outer part of the arm near the shoulder), and under the arms; you could look into the ribs and see the bone; it looked all black and green and blue.

Lewis Dyer:

I have seen men going around who had been vaccinated, and two or three days after all their arms would be eaten out, and their arms would have to be taken off.

Charles E. Tibbles, who was also engaged in burying the dead, says:

I saw a great many extra arms at the graveyard that were not cut, but were disjointed at the shoulder; they would be brought out with the dead, and almost always the next day the bodies would be brought out belonging to them; they were generally eaten up with vaccination.

William Crouse says:

I saw men get vaccinated there; it broke out; I saw about twenty of them die, and I saw five of them get their arms amputated.

John H. Stearns, speaking of amputation, says:

The result was almost invariably death; I do not remember a single case of recovery after an operation.

This witness was on duty at the hospital and is a man of much intelligence and candor.

To the same purport is the testimony of Charles E. Smith, who also speaks of the orders with regard to vaccination, and says:

He (the prisoner) said, any one who would refuse to obey his orders would have a ball and chain put on. There was a man named Shields belonging to the 2nd Iowa Infantry, who refused to be vaccinated; they took him out and put a ball and chain on him until he consented to have the matter put in his arm.

Several of the surgeons on duty at Andersonville have also testified to the fatal results of vaccination. You will remember that the surgeons who have testified through their reports, and upon the witness stand, have spoken largely of hospital gangrene that prevailed at Andersonville as a consequence of vaccination; and indeed, as they have universally testified, as a consequence of even the slightest abrasion of the skin, in cases of vaccination, however, resulting in appalling mortality.

Vaccination with genuine virus has never before resulted in such frightful mortality. The records of medicine and pathology, nowhere, in no country and no age, afford or approach a parallel to Andersonville; and it is eminently important that an explanation be reached if possible, and if criminality attach to any one, let its just consequences be upon him. The best medical and pathological authorities agree in describing hospital gangrene as a variety of mortification and ulceration with rapid contamination of the whole sys-

tem, depression and exhaustion of the vital powers. All of the conditions necessary to produce this terrible disease, we learn from many sources in this record, were abundantly supplied at Andersonville, and that there was scarcely a prisoner who was not more or less affected by it, or in a scorbutic condition to a greater or less degree. Now we all know what is the normal effect of pure vaccine virus properly introduced into a healthy system—one not previously vaccinated. A local inflammation is set up, a fever ensues, attended with a general disturbance of the constitution, and the insertion of the virus is the center and source of it all, with which the whole system sympathizes more or less, and from which, under the most careful circumstances and attention, alarming and sometimes fatal results follow. This is so well understood by the profession—as all of us have experienced who have submitted to the operation—that they always counsel a preparatory process by sanitary observances.

These facts, drawn from reliable and recognized medical sources, will enable the court and the world to appreciate in some degree the heartlessness and implacable cruelty of the rebel authorities at Andersonville, in persistently compelling prisoners of war to be vaccinated, in the condition they are shown to have been in. It will not do to say that this was resorted to as a preventive or precautionary measure. The record shows but few cases of death by small-pox, while the evidence establishes beyond doubt the fact that of many hundred prisoners vaccinated, few recovered. No one will pretend, after a perusal of this record, that the course of the rebel surgeons in this particular can in the slightest degree be excused; and with the fair inference of evil intent and wicked purpose on the part of the chief surgeons, Drs. White and Stevenson, and the prisoner at the bar, who with pistol in hand stood ready to enforce their direction, which can be drawn from the evidence, can you hesitate to find them “guilty” as laid in the charge?

The court cannot fail to observe that after having drawn

from the record this long black catalogue of crimes, these tortures unparalleled, these murders by starvation, implacable as could have been perpetrated had the spirit of darkness controlled them, there are yet many, very many, phases of Andersonville prison life that I must leave unnoticed.

Has there been any defense made to these horrors? Is there any palliation for their perpetrators? Lives there a witness who has denied or can deny them? The counsel for the prisoner had unlimited control of the strong arm of the government; he has had days and weeks for preparation; he has, as all must admit, labored sedulously and untiringly for his client, constituting himself at the same time counsel for his co-conspirators, yet, with all his efforts, so earnestly put forth, he has utterly, signally failed. The special acts of cruelty committed by the prisoner at the bar he has sought to explain; with what success I leave to you to judge. The general management and discipline, and his responsibility for the same while at Andersonville, he has sought to deny by showing the presence at that place of a superior officer, General Winder, who, he alleges, had chief control. All this is swept away by the fact that before General Winder's arrival the fearful rigors of that prison began; they continued during his stay, from June till October, and they subsided only in proportion as the number of prisoners became less, after General Winder's departure. And notwithstanding his earnest appeal, made to you in his final statement, begging that he, a poor subaltern, acting only in obedience to his superior, should not bear the odium and punishment deserved, with whatever force these cries of a desperate man, in a desperate and terrible strait may come to you, there is no law, no sympathy, no code of morals, that can warrant you in refusing to let him have all justice, because the lesser and not the greater criminal is on trial.

To the charge of suffering and death by starvation something excusatory could be urged in the fact that supplies were not to be obtained, had this been established; but here, as elsewhere, the defense has wholly failed.

While the burden of proof rested upon the defense to show that the sufferings at Andersonville were unavoidable, it will be remembered it was part of the elements of the case made by the prosecution to show not only the fact of starvation, but also that it occurred in a region of plenty, and in view of this fact, so clearly proven, we find reason for concluding beyond all doubt that this crime against nature was the work of a deliberate, malicious, traitorous and hellish conspiracy to aid a most treasonable rebellion.

I desire now to present to the court the evidence which supports me in the belief just declared. Here, as always, I desire that the witnesses may speak, that no man shall gainsay the facts.

Major General J. H. Wilson, of our army, who, perhaps, can speak as advisedly upon this point as any witness who has been upon the stand, for reasons shown in his testimony, says:

After passing through the mountainous region of northern Alabama, I found supplies in great abundance on our lines of march in sufficient abundance to supply a command of 17,000 men, without going off our lines of march for them. From the northwest corner of Alabama, to a point called Monte-Bello, and from thence south to Selma; from Selma southward to Montgomery; from Montgomery, two lines, one to Columbus, Georgia, and the other to West Point, Georgia, and thence, by two converging lines, to Macon, Georgia; and then all over the State of Georgia; from there to the Gulf.

That was their great region of supplies. We found lines of railway running very nearly in the direction of the march from Monte Bello, and between the parts of country spoken of, and Macon and Andersonville.

Ambrose Spencer, a resident of Georgia for many years, says:

Southwestern Georgia, I believe, is termed the garden of America. It was termed the garden of the Confederacy, as having supplied the greater part of the provisions of the rebel army. Our section of Georgia, Sumter county, is perhaps not as rich as the counties immediately contiguous, . . . but still it produces heavily. I suppose that the average of that land would be one bale of cotton to the acre; the wheat would average about six bushels to the acre; the average of corn about eight bushels. It

struck me that there was an uncommon supply of vegetables. Heretofore at the south there has been but little attention paid to gardens on a large scale; but last year a very large supply of vegetables was raised, as I understood, for the purpose of being disposed of at Andersonville.

James Van Valkenburgh, of Bibb County, near Macon, Georgia, says he has resided in that section for nineteen years, and that in the year 1864, speaking of the crops:

I should suppose, as to provisions, it was more than an average crop, inasmuch as no cotton was planted, and all the ground was pretty well planted in provisions; I should think the provision crop was larger than before the war. At Macon, about sixty-five miles by rail from Andersonville, there were a great many storehouses, where provisions of various kinds were stored—sugar, rice, molasses, meat (bacon), corn, wheat, flour, etc. At Americus there seemed to be very large quantities. I saw a great deal of stores in various warehouses.

Americus, it will be remembered, is only about nine or ten miles from Andersonville. The court will remember that of this “more than ordinary crop of provisions” the farmers were compelled by law to pay to the rebel government one-tenth. I make a few extracts from the evidence of one of the agents of that government—a tithe gatherer.

W. T. Davenport says:

I was tithe agent from April, 1864, till the surrender of Sumter county. The amount of bacon received at that depot from Sumter county, and from the counties of Schley, Webster, and Marion, of which my depot, being on the railroad, was the receiving depot, for the year 1864 was 247,768 pounds; we received of corn, 38,900 bushels; of wheat, 3,567 bushels; we received 3,420 pounds of rice in the rough; of peas, we received 817 bushels; of syrup, of West India cane and sorghum, 3,700 gallons; of sugar, 1,166 pounds. This was all in the year 1864. In 1865, from the 1st of January till the 19th of April, which was the time of the surrender, I received from those same counties 155,726 pounds of bacon, 13,591 bushels of corn, and 86 bushels of wheat. This was the remnant due on the old crop, the new crop not having been gathered. I received of rice (rough), 2,077 pounds; of peas, 854 bushels; of syrup, 5,082 gallons. And these were not the only tithes gathered. In these counties there were, besides my depot, others from which I have no account. There was a depot at Andersonville. Some portion of the tithes were delivered there, and some portions were deliv-

red to traveling companies that received tithes, and were not reported to me. Two of the counties, Schley and Webster, were quite small. Sumter and Marion are fair average counties.

This immense amount of provisions is but a small portion received by the rebel government through their tithe-gatherers, it being brought to the depots by the farmers themselves, and was only one-tenth of the amount produced by them. These stores were turned over to W. B. Harrold, who was commissary agent for those counties, and who was also purchasing agent. He says:

For the last three years I have been purchasing and shipping supplies for the commissary department of the rebel government for a district embracing from four to six counties in southwestern Georgia; one of the counties being that in which Andersonville is located. I was ordered at all times to hold all supplies which I had at Americus, after May or June, I think, subject, first, to Andersonville, in case they should get out of provisions there at any time. My provisions were reserved for Andersonville, to be called on in case of an emergency. I was ten miles distant. Such provisions as I had there—bacon and meal—I don't think they were ever out of at Andersonville.

I don't think I was ever called on for provisions that I did not furnish, with the exception of meal. In the early part of 1864 they depended on my arrangements for meal altogether. During the first two or three months of the prison, say February, March and April, before the crowded condition of the prison, the orders were to issue five days' rations at a time, on requisition. I kept up very well until they began to crowd the prisoners in, and then I could not furnish sufficient meal, and other arrangements were made. The meal was afterwards obtained in large quantities from the Palace mills, in Columbus. There was never a time when there need to have been suffering at Andersonville because of the inability to get supplies there, so far as corn bread and meal were concerned. At all times I think they could have procured transportation, and did procure it. The same provisions were furnished to Andersonville that were furnished to the army, and the same were furnished there as were furnished to the hospital.

But we have the evidence of scores of witnesses that they were never received by our starving prisoners.

James W. Armstrong was commissary at Andersonville from March, 1864, until August, 1864, and from December, 1864, until the close of the war.

Until the 14th of July all the rations were delivered to R. B. Winder, or to his sergeant for him, and after that time to Captain Wirz's sergeant. He says he doesn't pretend to know whether the rations issued by him were actually delivered to the prisoners or not. He says:

I was never at any time so short I could not issue food to the prisoners. In three or four instances I issued rice instead of corn meal, but I always made up the rations. Never found it necessary to diminish the rations, except by substituting one thing for another.

Colonel Ruffin, who was in the commissary department at Richmond, and who was called for the defense to show that Lee's army suffered for the want of provisions, says that at that time the prisoners were consuming General Lee's reserve of 30,000 barrels of flour; the removal of prisoners from Richmond to the seat of plenty was urged by the commissary department. "After awhile," he says, "the prisoners were sent to the place of comparative plenty, or to the place of supply." He further says, that in sending the prisoners to Georgia the only object of his department was to get them to what was considered a good region of country; that they were drawing supplies from Georgia to feed General Lee. He says that the armies of the southwest fared better than General Lee's army, "because they were in Georgia, where there was more abundance." And in the same connection on cross-examination, says that General Lee's army suffered because it was cut off from the southwest by federal raids, which destroyed their railroad communication.

Ambrose Spencer says:

That section of southwestern Georgia is well supplied with mills—both grist-mills, flour-mills, and saw-mills. Between Andersonville and Albany—about fifty miles . . . there are five saw-mills, one of them a large one. There is one at a distance of six miles from Andersonville that goes by steam. There is another about five miles from Andersonville that goes by water. There are saw-mills on the road above Andersonville.

It is a very heavily timbered country, especially in the region adjoining Andersonville; it may be termed one of the most densely timbered countries in the United States.

I was there (Andersonville) during June and July very frequently, at the time Governor Brown had called out the militia of the state. Their tents were all floored with good lumber, and a good many shelters of lumber were put up by the soldiers. I noticed a good many tents that were protected from the sun by boards. There seemed to be no want of lumber at that time among the Confederate soldiers.

Colonel Persons says "that about five train loads, perhaps fifty car loads in all, came to Andersonville while he was there. This, he says, would have covered two, three, four or five acres with barracks.

Thus we have shown from evidence of the highest character, that the defense based upon want of supplies within the reach of the rebel authorities, and which is popularly believed to have been the real cause of the sufferings of Andersonville, is entirely overthrown, and without foundation in fact; and the same may be said of every question entering into the defense incident to the matter of supplies. With whatever truth the straitened circumstances of the South may be urged to excuplate those in charge of other prisons, certainly, so far as Andersonville is concerned, no one will hereafter with seriousness dare to urge it.

Having shown with certainty that supplies were abundant and available, I cannot omit to mention what amount was actually issued as the only means of sustenance to the prisoners. I quote Dr. Bates, whose acknowledged credibility on the part of the accused in his statement to the court makes it unnecessary to support him by the many witnesses who testify to the same point; but the court will remember that his estimate is several ounces more than the prisoners themselves testify to having received. He says:

"I wish to be entirely safe and well guarded on this point. There might have been less than 20 ounces to the 24 hours; but I do not think it could have exceeded that."

The ration, it will also be remembered, consisted of one unvarying diet of corn bread and salt meat, with an occasional issue of peas, and with no vegetables whatever. In comparison with this scanty allowance which the concurrent tes-

timony of all the witnesses shows was the immediate cause of the great mortality at that prison, I desire to call your attention to some interesting and instructive facts, showing the amount of food necessary to sustain life. I quote from a work on the economy of armies, by medical inspector Lieutenant Colonel A. C. Hamlin, United States army:

The data of French's show that 18 ounces of properly selected food will be sufficient, and the observations of Sir John Sinclair are to the same effect, yet Dr. Christison maintains that 36 ounces are required to preserve the athletic condition of prisoners confined for a long term. To preserve the athletic condition with these small quantities, the nutrient substance must be of known value.

In the public establishments of England the following quantities are given:

British soldier, 45 ounces; seaman, royal navy, 44 ounces, with one pint of beer; Bartholomew, 31 ounces, with 4 pints of beer or tea; Kings, 25 ounces.

The Russian soldier has bread 16 ounces, meat 16 ounces; Turkish soldier had bread 33 ounces, meat 13 ounces; French soldier has bread 26 ounces, meat 16 ounces.

The United States soldier receives $\frac{3}{4}$ pound of bacon, or $1\frac{1}{4}$ pounds of fresh or salt beef; 18 ounces of bread or flour, or $\frac{3}{4}$ pound of hard bread, or $1\frac{1}{4}$ pound of corn-meal; with rice, beans, vegetables, coffee, sugar, tea, etc., in proportion.

When we remember that there seems to have been no difference made in the rations issued to the sick in the hospital and prisoners confined in the stockade; that, as we have seen by the testimony of Dr. Jones, the mortality was proportionately the same in both places, and all the surroundings so prolific of disease, added to the fact that for months the prisoners had barely room to stand upon, we are prepared to comprehend the force of the illustrations above given and those which I shall now give. The number of patients treated in the hospital at Andersonville is shown by the hospital register to have been something less than 18,000, the number of deaths a little short of 13,000, and to this number must be added 2,000 more, who, as we have shown with reasonable certainty, died before reaching their homes, making in all 15,000, and this falls far short of the maximum number,

giving, as we see, frightful ratio of mortality of over 83 per cent.

Quoting from the same learned author we find that "The average mortality of the London hospitals is nine per cent; in the French hospitals in the Crimea, for a period of twenty-two months, the mortality was 14 per cent. The city of Milan received during the campaign in Italy 34,000 sick and wounded, of whom 1,400 or four per cent, died. The city of Nashville, Tennessee, received during the year 1864, 65,157 sick and wounded, of whom 2,635, or four per cent, died. During the year 1863, Washington received 68,884, and of these but 2,671, or less than 4 per cent, died; and in 1864 her hospitals received 96,705 sick and wounded (49,455 sick, 47,250 wounded), of whom 6,283, or 6.4-10 per cent, died. The mortality of the rebel prisoners at Fort Delaware for eleven months was two per cent; at Johnson's Island during twenty-one months, 134 deaths out of 6,000 prisoners."

This is the record of history, against the charnel-house of Andersonville. Let the mouths of those who would defend these atrocities by recrimination, charging the United States government with like cruelty, forever hereafter be closed.

Fort Delaware and Johnson's Island, with their two per cent of dead. Andersonville with its 83 per cent! "Look upon this picture and then upon this," and tell me there was no design to slay! Let no mind, be it warped never so much by treason and treasonable sympathies, doubt this record, for "If damned custom have not brazed its soul—that it be proof and bulwark against sense," it must believe; it cannot deny these things.

May It Please the Court, I have done with the argument under charge first. I leave it with you to answer by your verdict whether this charge of conspiracy, solemnly and seriously preferred, can be frittered away and disposed of without a single explanatory line in defense. I place before you, gentlemen, on the one hand the protestations of this accused, who speaks for himself and his co-conspirators; on the other the testimony of Dr. Bates, where he declared, as you well

remember, with faltering tone and feelings overpowered, "I feel myself safe in saying that 75 per cent of those who died might have been saved had those unfortunate men been properly cared for."

I leave it with you to say whether the prisoner at the bar can acquit himself and his associates in crime by declaring the charge here laid to be, as he has told you, "a myth," "a phantasy of the brain," "a wild chimera, as unsubstantial as the baseless fabric of a vision."

Murder in Violation of the Laws of War.

October 21.

We now come to notice charge second, alleging "murder in violation of the laws of war," under which there are laid numerous specifications, alleging, with all the particularity that was possible, the circumstances in each case.

In presenting the evidence under this charge, I shall try to do so in the briefest and simplest manner.

I shall not endeavor to torture the evidence to support any preconceived theory, nor ingeniously dovetail scattered scraps of testimony to make out a case. I am content to leave the court to reach its own conclusions; and therefore I shall (except in two cases which have been particularly referred to in the defense) do little more than simply recite the evidence of the witnesses. My simple purpose is to aid the court in the discharge of the arduous task upon which it is about to enter, in making up a verdict on this voluminous record.

The various cases of death which are justly to be laid to the charge of this prisoner as murders, may be considered under four heads:

1. The cases of death resulting from mutilation by the hounds.

2. The instances of death resulting from confinement in the stocks and the chain-gang.

3. The cases of killing of prisoners by the guards, pursuant to the direct order of the accused given at the time; and

4. The cases of killing by the prisoner's own hand.

This classification does not embrace those very numerous cases (which it is not deemed necessary to recount in detail) where prisoners at or near the dead-line were shot by the guards when the accused was not present.

The responsibility of the prisoner for these murders (for such wanton, unprovoked and unjustifiable destruction of human life was nothing less) has been treated of in a previous branch of the argument. Without repeating that argument, I will say in addition that there is no truth in the assumption put forth as a defense in the written statement of the accused, that the prisoners within the stockade had ample notice of the dead-line regulation, and that, if any were shot in crossing that line, he was not responsible. The evidence of the defense failed to show (although I believe it was attempted) that the dead-line regulation was posted up within the stockade.

Besides, many of the witnesses on this stand testified that, going to Andersonville, as new prisoners, they received no authoritative notice of the dead-line regulation, but accidentally or casually acquired that knowledge from their companions; and some have told us of their hair-breadth escapes from being shot soon after entering the stockade, in consequence of their ignorance of that regulation; and a number of witnesses have described how their comrades lost their lives in consequence of similar ignorance. After all the evidence on this subject, I was astonished, as I doubt not was the court, when the prisoner, in his statement, inquired with singular effrontery, Is it within the range of probability that there was a single prisoner within the stockade who did not know the penalty for encroaching upon the dead-line?

Before proceeding to refer to the evidence as to the deaths from mutilation by the hounds and from confinement in the stocks and chain-gang, it may be proper to say a few words as to the criminal responsibility of the prisoner for these deaths. In the first place, I need hardly remind the court of that fundamental principle of law that "a sane man is con-

clusively presumed to contemplate the natural and probable consequences of his own acts." (1 Greenleaf Evi., Sec. 18.) This principle, I submit, applies in this case with great force. I maintain that the deaths resulting from the use of the stocks and the chain-gang as an indiscriminate punishment for the healthy and the sick, the strong and the feeble, and the deaths consequent upon the pursuit of escaping prisoners with ferocious hounds, were but the "natural and probable" than that a prisoner, emaciated by disease and starvation, should, when confined in the chain-gang or the stocks, die from such confinement? What more "natural and probable than that a ferocious dog, when pursuing an escaping prisoner, should tear and mortally mutilate such prisoner, particularly if he were in the debilitated condition which characterized most of the prisoners at Andersonville? And when death results under such circumstances and from the adoption of such methods of treatment, an intention to kill on the part of him who adopts them is conclusively inferred from the deliberate use of a deadly weapon." (1 Greenleaf Evi., Sec. 18.)

Again, it has been laid down that the crime of murder is consummated, "Whensoever any one wilfully endangers the life of another by any act or omission likely to kill, and which does kill." (2 Starkie Evi., 710.) It has also been declared by high legal authority that—

It is not essential that the hand of the party should immediately occasion the death; it is sufficient if he be proved to have used any mechanical means likely to occasion death and which do ultimately occasion it; as if a man lay poison for another with intent that he should take it by mistake for medicine, or expose him against his will in a severe season, by means of which he dies. (2 Starkie on Evidence, 710, note.)

As illustrative of the same legal principle, allow me to quote from Wharton's Criminal Law, 435:

If a person breaking in an unruly horse wilfully ride him among a crowd of persons, the probable danger being great and apparent, and death ensue from the viciousness of the animal, it is murder. For how can it be supposed that a person wilfully doing an act

so manifestly attended with danger, especially if he showed any consciousness of such danger himself, should intend any than mischief to those who might be encountered by him? So if a man maliciously throw from a roof into a crowded street, where passengers are constantly passing and repassing a heavy piece of timber, calculated to produce death on such as it might fall, and death ensue, the offense is murder at common law.

From these principles, it follows that when we show the prisoner's responsibility for the use of the chain-gang and the stocks, and for the employment of the hounds, we show that every death resulting from these was a murder for which he is to be held accountable.

In this connection, allow me to refer hastily to some of the evidence showing the responsibility of the prisoner for the use of the stocks and the chain-gang, and for the employment of the hounds.

Numerous witnesses testify as to the prisoner ordering men into the stocks and the chain-gang. In some cases the men subjected to this treatment were very greatly debilitated, and in other cases they had just been brought back wounded by the hounds.

Several witnesses testify that the accused would go round the stockade every morning in company with the hounds to get the track of prisoners who had escaped. Halley states that he heard him tell Turner to get the dogs. James Mohan, a rebel officer who was on duty at Andersonville, testifies that when "Frenchy" escaped, the prisoner gave orders to get the dogs after him, and he was captured, the prisoner going with the dogs; and this, the court will remember, is admitted in the statement submitted to him. Boston Corbett testifies that after being captured by the dogs, he was brought before the accused, who said to the captor: "Why did you not make the dogs bite him?" J. H. Davidson saw a prisoner torn by the dogs, the accused being present. Dr. F. G. Castlen, who was a surgeon in the rebel service, relates an instance where a man was ordered down from a tree and bitten by the hounds, the prisoner being present. John F. Heath, a rebel officer who was on duty at Andersonville, tes-

tifies that when "Frenchy" was pursued the prisoner ordered him down from the tree and the dogs rushed at him and bit him, the prisoner not trying to keep the dogs off. This rebel witness, it will be observed, contradicts the allegation made by the prisoner in his statement, that he endeavored to keep the dogs off. James P. Stone says that the dogs were fed with rations drawn from the bakery, most frequently by a young man who assisted Turner, and that the prisoner signed an order once "to give this man all the bread and meat he wants for the dogs." Joseph Adler testifies that on one occasion Dr. White and the prisoner were looking at a man who was so mangled by the dogs as to be almost dead, when the prisoner said, "It was perfectly right, that it served the man right; that he had no business to make his escape, and that he would not care if all the damned Yankees in the stockade could be served in the same way as that, as he wanted to get rid of them." The prisoner himself, in his consolidated return from August, 1864, speaks of 25 prisoners who escaped during the month, but were taken up by the dogs.

These citations, which might be multiplied, are sufficient to show the responsibility of the accused for the punishment of the prisoners by the stocks and the chain-gang, and for the pursuit of prisoners by the hounds; and according to the principles already referred to, every death resulting from such punishment and such pursuit must justly be considered as having been murderously caused by him, remembering also that the use of the means resorted to and the means themselves were a gross and wicked violation of the laws of war.

I will now proceed to recite the evidence as to the cases where death resulted from the pursuit of prisoners by the hounds.

William Henry Jennings testifies that a month or two after he was whipped, which was in the month of March, he being in the hospital, saw a man come in who was torn by the dogs—bitten from his feet up to his head and all around his neck, and that the man died shortly afterwards. Bernard Corrigan

states that in May he saw a prisoner who was badly bitten by the dogs in both legs, and he had a piece of his ear cut off. The man was carried to the hospital the day following, and the witness never saw him afterwards. James E. Marshall testified that in May he saw a man whose leg was torn by the hounds, and who afterwards died in the hospital. John L. Yonker testifies that just before the raiders were hung, which was about the 11th of July, a man belonging to an Indiana regiment tried to make his escape from the hospital, was recaptured by the hounds and sent back to the stockade in the evening; that his right ear was almost off, and that he was bitten in several places in the legs and had hardly any clothing on him; that witness gave him a piece of his shirt and helped to tie up his wounds; that the wounded man gave his friend a picture to give to his mother if he should never recover, because he believed he would die; that the next morning he was dead; that the man stated that he had tried to climb a tree, but the dogs pulled him down.

George Conway testifies that on one occasion he saw a man who had been caught by the hounds, while making his escape from the hospital; the man was bitten on his legs and in his cheek. Joseph Adler states that in the latter part of June or the beginning of July, Dr. White and the prisoner were looking at a man who had been mangled by the dogs; the prisoner said it was perfectly right.

George W. Gray states that on one occasion he saw a young man who had just been brought into the stockade, after having been caught by the hounds. Part of his cheek was torn off; his arms, hands and legs were bitten, so that he only lived about 24 hours after having been brought into the stockade. Thomas N. Way states that in the latter part of August he and two others, with whom he escaped, were pursued by the hounds, and that one of his comrades was caught by the foot as he was climbing a tree and was torn all to pieces. A. W. Barrows states that about the end of August a man who had been bitten by the dogs when trying to escape was brought into his ward and died about five days

afterwards. Jas. P. Stone states that in July or August he saw a man who had made his escape, who had been caught and badly torn by the dogs; that he was bitten badly in the legs and also a great deal about the neck and shoulders; that he had made his escape and climbed a tree; that the accused and Harris shook him down and allowed the dogs to tear him. Frank Maddox testifies that when he was burying a man who had been bitten by the dogs, had afterwards been placed in the stocks by order of the prisoner, and who had died, Turner, who had charge of the hounds, came to the graveyard and said that there had been two men bitten by the hounds, and that they let the dogs tear up the other one in the woods, and that they left him there. W. W. Crandall testifies that on one occasion (he does not give the date) he saw a man with his legs badly torn by the dogs; that a ball was put upon his foot, and that he was kept that way for several weeks; that witness went to the prisoner and pleaded with him to take the balls off. The prisoner said he could not do it. Witness asked the surgeon to do it. The surgeon examined the man and said that he could not conscientiously take off but one. The man's leg became badly swollen, and witness believes the man died, as he three weeks afterwards buried a man whom he thought he recognized as the same.

I have thus hastily passed over the evidence touching this class of murders. I shall presently endeavor to individualize the instances mentioned and to reconcile and unite the separated, and in some instances apparently complicated, circumstances. But, before doing so, let me suggest that on the review of this evidence, while the testimony must be and ought to be subjected to the closest criticism and scrutiny, and while the court should be convinced, beyond a reasonable doubt, of the guilt of this accused, still I submit it as worthy of grave consideration that there are many circumstances peculiar to prison life, as it was at Andersonville, which make the ordinary test applied in tribunals of law for the verification of testimony altogether inappropriate in this case. The court will not forget that there existed at Ander-

sonville, a condition of affairs for which it would be impossible to find a precedent. The prisoners were deprived, to a great measure, of facilities for ordinary intelligence or for communication with each other and the outer world. They were subjected to the closest and most cruel confinement and discipline. Most of them were constantly racked with the pangs of hunger or disease, or engrossed from hour to hour in a struggle with death in which the odds were fearfully against them. Their companions were constantly dying around them, either from emaciation, disease, or acts of violence, so that, as the prisoners themselves have declared in the presence of the court, they became so habituated to these horrible surroundings, that the death of a comrade, under what would ordinarily seem the most frightful circumstances, made in many cases but a slight impression upon their minds; and certainly they would not charge their memory with dates or circumstances, even should they be able to fix the time, and it will be remembered that many of them state that they lost all knowledge of the days of the week and the month. Besides, they never expected to emerge from the scene alive, and never hoped that a day would come when their prosecutor should be arraigned before a tribunal of justice, and they themselves be summoned as witnesses to his iniquitous acts. It is not to be expected that, under these circumstances, witnesses should evince such precision as to dates and minute particulars as might be expected in an ordinary trial for the investigation of offenses disturbing but rarely the tranquility of civilized society. A court of justice never requires higher evidence than the best of which the case will admit; for, as has well been remarked by a distinguished legal writer:

The rules of evidence are adopted for practical purposes in the administration of justice, and must be so applied as to promote the end for which they were designed. (1 Greenleaf Ev., sec. 83.)

But I have no apology to offer, no defense to make, for the testimony upon which the prosecution relies for the conviction of this accused under the charge now being examined.

In every case where you are asked to hold the prisoner responsible for the death of any one of those in his custody, you will find the evidence direct, positive and clear; you are not asked to find this prisoner guilty upon vague, uncertain, doubtful testimony, but you are asked to apply the rules of evidence properly applicable to cases occurring under the peculiar circumstances to which we have alluded, always remembering that your duty is to arrive at the truth in the most direct manner possible.

Without pretending to make an argument in this connection, desiring only to aid the court in determining the fact, I will try to arrange the evidence under this branch of charge second in chronological order.

The first proof of injury by the dogs, where death resulted, was some time in the month of May, 1864. I have already cited, at some length, the testimony of the witnesses bearing upon this point, and will not recapitulate, but will merely refer the court to the witnesses. They are William Henry Jennings, Bernard Corrigan and James E. Marshall.

Another case which is clearly defined in the evidence occurred about the 11th of July, and is stated with some particularity of time, place and circumstances, by a witness whom the court must remember as one of intelligence and candor. To this testimony I call especial attention. It has already been briefly cited, but I will give his language, at greater length.

John L. Yonker, after having related the circumstances as I have before given them, goes on to narrate the death scene of his murdered comrade, and what occurred at the time, and from all the circumstances, together with the dying declarations of the unfortunate victim, we have presented a clear case of murder.

The dying man in that same conversation told me how he had been injured. We questioned him, and he replied, in a feeble voice, that he had got about 35 or 40 miles, and was strongly pursued by the hounds; that as he was very weak, coming out of the hospital, he tried to climb up a bush, but was pulled down by one of the hounds, and so disabled that he could proceed no further. We had

to stir him up once in a while, give him a regular shaking, so that he might answer a few more questions, because he was expiring. I saw him after he was dead. This was just a few days before the six raiders were hung, which was on the 11th of July.

Another case which stands out clearly in the evidence is that related by Thomas W. Way. This witness, in company with two comrades, had made his escape. They were overtaken by the dogs. This is his testimony on that point:

I remember a soldier being torn to pieces by hounds. He was a young fellow, whose name I don't know. I knew him by the name of Fred. He was about 17 years old. When we heard the dogs coming, I and another prisoner who was with me, being old hands, climbed a tree. He tried to do so, but he had not got up when the hounds caught him by the foot and pulled him down; and in less than three minutes he was torn all to atoms. Turner was close behind; he got up just as the man was torn to pieces and secured the hounds, and we came down. Think Fred died; he was all torn to pieces. Turner said: "It is good for the son of a bitch; I wish they had torn you all three to pieces."

It would seem impossible to doubt a statement so clearly made and under circumstances calculated to impress the incident indelibly upon the mind of the witness. Corroborative of Mr. Way, however, is the testimony of Samuel (Frank) Maddox, who says that Turner told him one day at the graveyard that he had let the dogs tear a man to pieces in the woods, which, from coincidence of time and circumstances, seems to be the same incident as that given by Way.

The next case of murder by dogs, and as clearly defined as any previously given, is the one related by Dr. A. W. Barrows, who was on duty in the hospital. He says:

I remember a man making his escape from the hospital in July, and being overtaken by the hounds. A large portion of his ear was torn off, and his face mangled, and he was afterwards brought into the hospital. That man got well. This was in July or August, 1864. I do not remember the exact date. I remember also, that at the end of August, or in September, 1864, a man who had been bitten badly by the dogs in trying to make his escape, was brought into my ward and died. The wound took on gangrene and he died. He was a Union prisoner. The gangrene was the result of the bite, in my opinion.

This is confirmed by the testimony of James P. Stone, already cited. Of the facts as presented by Dr. Barrow's testimony there can be doubt. He was an officer on duty in the rebel hospital, and is a gentleman whose credibility has in no way been doubted. It might perhaps be urged on the part of the defense that as the witness states that the death of the prisoner occurred from gangrene directly, and from the wound indirectly, the benefit of the doubt thus raised must be given to the accused. Let me remind the court of the law governing in such cases. It is laid down in 2 Starkie's Evidence, 711, that—

It is sufficient in law to prove that the death of the party was accelerated by the malicious act of the prisoner, although the former labored under a mortal disease at the time of the act. And it is sufficient to constitute murder that the party die of the wound given by the prisoner, although the wound was not originally mortal, but because so in consequence of negligence or unskillful treatment.

The evidence shows in this case that the patient died of gangrene; that the gangrenous affection was confined to the wound; that he was not so affected before the wound, but was affected immediately afterwards; that he did not die of any other disease or malady.

The fact, therefore, being clear that the death was occasioned or certainly accelerated by the wound, there is no other course left you but to find that the case stands in the same position as if the man had been killed on the spot by the dogs.

We have thus presented a classified analysis of the evidence bearing upon the charge of murder by the use of the hounds. The only defense set up under this charge is given in the statement made by the accused to the court, and is an attempt to confound the prisoner "Frenchy" with all the instances given by different witnesses; and as it was shown in the evidence of the defense that "Frenchy" did not die, you are asked to conclude that this prisoner must be acquitted of this branch of the charges.

Now, it has not been assumed at any time by the prosecution, nor was an attempt made to prove it, that the man "Frenchy," so called, was killed. The incident referred to by the defense was one occurring within plain sight of the post.

The witnesses, Heath, Castlen and Mohan, rebel officers, testified with regard to it early in the prosecution, and made the facts so clear that it is somewhat surprising that counsel would attempt to raise a reasonable doubt in behalf of their client, by an attempt to confound this case with the numerous others so clearly and distinctly defined in the testimony. The court will bear with me a moment while I give, in this connection, a part of the prisoner's own statement of the "Frenchy" occurrence; and I give it for the reason that it discloses a fact which has been persistently denied, that the hounds used were ferocious and dangerous to human life; and for the additional reason, that it shows, from the prisoner's own admission his control over the dogs and his responsibility for whatever injury resulted from their use. The language of his statement is this:

"Frenchy" again effected his escape by jumping into a thicket near the creek. The matter was reported to me. I had the dogs sent for. They soon came on his track, he took to a tree; one of the pursuing party (not I) fired a pistol close to him to induce him to come down. He was not hurt, but he dropped or fell from the tree into a mud hole, when the dogs rushed upon him. I jumped on the dogs and drove them off.

Here, as elsewhere, it would have been safer and wiser for the accused to have rested his case upon the evidence without attempting explanations.

In the next place, I will proceed to recite the evidence as to cases of death from confinement in the stocks and in the chain-gang.

William Crouse states that a few days before the raiders were hung, which was the 11th of July, a man died in the tent next to the one occupied by witness; that the death occurred the next day after being relieved from the stocks, in

which he had been confined about two weeks without intermission. George W. Gray testifies that he was in stocks the last of August or the first of September, and that the third man from him—a sick man—died while in them; that the negroes took him out of the stocks after he was dead and hauled him away. Nazareth Allen states that in August, 1864, he saw a man who died in the chain-gang or stocks; he thinks it was the stocks. Alex Kennell (manuscript, p. 556) testifies that in February, 1865, a man was taken out of the stockade in the evening and put in the stocks and kept there all night, and that he died in eight hours after being released; that the man said he was chilled till he was insensible. James P. Stone testifies that he saw (he thinks it was some time in June) a man in the chain-gang, sick with chronic diarrhoea; that he was kept in the gang until it was impossible for him to move; that he was taken out and left at the guard-house near the stocks; the band was left on his neck and the ball on his leg, and he died with these on him. James Culver testifies that he saw twelve men in the chain-gang, but he still had the ball upon his legs and the band was very poorly, and looked as though he could hardly carry himself. Those in the gang complained about his being sick; he caused them a great deal of trouble by reason of his having diarrhoea. Witness afterwards saw the man out of the gang, but he still had the ball upon the legs and the band around his neck. He afterwards died in the guard-house. Witness saw the irons taken from him after he was dead. He died in three or four days after being taken out of the chain-gang. The witness thinks he died some time in July. In connection with this some testimony given by Heath, Dillard and Honeycutt, rebel soldiers, who were on duty at Andersonville, may be pertinently introduced. John F. Heath testifies that in the month of August, 1864, a man was sick in the chain-gang and the gang objected to his being in it, because of his condition; that there were twelve men in the chain-gang. William Dillard (manuscript, p. 328) testifies that in August he guarded the chain-gang one day and night,

when twelve men were in it; one of them was very low, and had to go out every five or ten minutes; that the others of the chain-gang wanted him taken out; that when the man was taken out, he could just stand up. Calvin Honeycutt states that he guarded the chain-gang for one or two days and nights; that one of the men was sick and the rest wanted him taken out. John Pasque states that some time in July he saw a man put in the chain-gang, and saw his dead body after he was taken out. Robert Tait testifies that on one occasion (he does not know the date) one man was put in the chain-gang when very sick; that he remained in it for about two days; that the surgeon told the prisoner that he had better take the man out; that the prisoner gave orders to have him released; and the next morning he saw him hauled away to the graveyard.

The evidence here briefly recited presents two distinct murders, by the use of the stocks and one by the chain-gang. The cases presented by William Crouse and George W. Gray (cases of death by the stocks) come directly within the general principles of law before cited. The witness Crouse, after narrating the circumstances, as heretofore briefly given, testifies as follows on cross-examination:

There was nothing the matter with him besides being in the stocks. I saw the man in the stocks for two weeks when I went out in that way. He died from weakness; he was starved.

This occurred, as the witness states, about the time the raiders were hung. The evidence, it is true, does not present a case of death directly attributable to the stocks; but it is clear that death resulted from a conjunction of circumstances, of which the stocks was one important element, all being the result of the orders of the accused. It is immaterial whether the man died from the injuries inflicted by the stocks alone; the circumstances fully bring the case within the principle already cited, that "it is sufficient in law to prove that the death of the party was accelerated by the malicious act of the prisoner." The second case of this class

is presented by the testimony of George W. Gray. The witness had made his escape, was caught by the dogs and returned to the prison. He testifies:

I was brought back to Andersonville prison and taken to Wirz's quarters. I was ordered by him to be put in the stocks, where I remained for four days, with my feet in a block, and a lever placed over my legs, with my arms thrown back, and a chain running across the arms. I remained four days there in the sun. That was my punishment for trying to get away from the prison. At the same time a young man was placed in the stocks, the third man from me. He died there. He was a little sick when he went in and he died there. Do not know his name. This occurred about the last of August or the 1st of September, 1864. Am certain he died. The negroes took him out of the stocks after he was dead, threw him into the wagon and hauled him away.

This witness is strongly corroborated by the rebel soldier, Nazareth Allen, who (p. 305) testifies:

One man died in the chain-gang or stocks, I think in the stocks, some time in August, 1864. He appeared to be sick when I saw him. I saw him only once or twice; and afterwards I saw him dead. . . . Q. How long was this man confined in the stocks. A. I cannot say; there were several in the stocks. Q. Do you know for what this man was placed in the stocks? A. I do not; I think it was for trying to escape. These stocks were between Captain Wirz's headquarters and the stockade.

In reference to this occurrence, Gray is so strongly corroborated by Allen that I do not deem it necessary to comment on the evidence more particularly.

There is still another case of death by the use of the stocks, to which I ask your attention, as giving, besides the fact itself, proof that these punishments were continued until almost the time of breaking up of the prison. This is the case mentioned by Alex Kennell, who says:

I have seen them (the prisoners) put in the stocks. One special act which I know of occurred last February. In that case a man was taken out of the stockade in the evening, about 4 o'clock, and kept in the stocks all night. He was turned into the stockade the next morning at 9 o'clock, and he died in less than eight hours. He died in the stockade. When the man was taken from the stockade he was apparently as healthy as any prisoner in the stockade. He was kept all night in the stocks, which were outside the stockade.

I talked with him an hour before he died. He was impressed with the belief that he was chilled to death that night in the stocks. He told me that he was kept in the stocks from the time he was taken out until about 8 o'clock in the morning. He was chilled so thoroughly that night that he was insensible. I did not know his name. He belonged to a Pennsylvania regiment. It occurred about the 15th of February, 1865.

I come now to notice the deaths resulting from confinement in the chain-gang. There is some evidence of more than one death having occurred by these means; but aside from one instance the testimony is so vague and unsatisfactory that I do not ask the court to consider it. There is one case, however, so clearly defined, so fully proved, as to admit of no doubt. This is the case, the court will readily remember, as occurring in the chain-gang of twelve. The facts in this case are given so clearly and by so many witnesses (a synopsis of whose testimony I have already presented) that the circumstances, I have no doubt, are fresh in the memory of the court; and I will therefore consume no further time by quoting particularly the evidence. The eyewitnesses of this occurrence, which seems to have been one of the most sad and cruel of the whole list, present an array of testimony which cannot be overthrown, and which there has been no attempt on the part of the defense to explain away. The witnesses fix this occurrence about the time the raiders were hung. The testimony is given by James P. Stone, James (Jasper) Culver, John F. Heath, a rebel soldier; William Dillard, a rebel soldier; Calvin Honeycutt, a rebel soldier; John Pascol (Pasque), Robert Tait and James H. Davidson.

Before proceeding to notice the evidence as to the acts of murder committed immediately under the prisoner's orders or by his own hand, allow me to remark that the court, in considering these specific acts, will hardly overlook the confirmatory evidence embraced in the testimony as to the general language and conduct of the accused towards the prisoners. I submit that his language and conduct, as exhibited in the testimony, furnish such evidence of malice as to raise a strong presumption of guilt.

Wharton, in his Criminal Law (p. 240), speaks of the "presumption of guilt from declarations of intentions and threats, from which the presumption of guilt may be drawn with great strength, when there is preliminary ground laid."

On this principle, I maintain, the numerous well-proven declarations and threats of the accused, evincing his utter indifference whether the prisoners lived or died; nay, his desire that they should die, and his ambition to compete with rebel generals in the field by killing off as many Union soldiers as possible, are justly to be viewed as confirmatory of the evidence in regard to the specific acts of murder laid to his charge. And as similar proof of malice on his part, raising a presumption of guilt against him in reference to specific murderous acts alleged, the court will not, I think, disregard the general evidence of his brutal treatment of prisoners, exhibiting toward them a malignity of temper of which murder would be but the natural outgrowth. The conduct and the expressions of the accused, as proved throughout the whole evidence, shows a vindictively malicious feeling towards the prisoners, and this general malice is sufficient to furnish probable cause for the special acts of killing testified to by the witnesses, particularly as in almost every instance of killing the act itself was accompanied by declarations indicating strongly a malicious and willful intent.

Murders by Prisoner's Direct Orders.

In discussing the murders alleged to have been committed under the prisoner's direct orders, the first case that claims attention is that in which the victim was a one-legged soldier, known among the prisoners as "Chickamauga." The court will pardon me for dwelling somewhat at length on this case, as it is one of those two which the prisoner has singled out as the only cases worthy of a serious attempt at defense in connection with the charge of murder. Some of the witnesses who narrate the facts of this occurrence are S. D. Brown, O. S. Belcher, J. R. Achuff, Th. Hall, J. Adler, Gottfried Brunner, O. B. Fairbanks, E. L. Kellogg, A. J.

Spring, C. E. Tibbles, J. E. Marshall, A. A. Kellogg, A. Henshaw, Thomas N. Way.

The accounts of this occurrence, given by these different witnesses with greater or less particularity, are entirely consistent as to the main facts, while as to unimportant particulars, there is doubtless that slight variation which always characterizes accounts given by different eyewitnesses of the same occurrence, and which, as it excludes the idea of concerted falsification, is the strongest voucher for the good faith and veracity of those who testify.

The essential facts which stand out clearly in this mass of testimony, so clearly that the prisoner himself, as I shall presently show, has been driven to a substantial admission of them, are, that a poor, demented cripple, whose imbecile condition was notorious in the stockade and among the guards, sought to be taken from the stockade that he might be protected from the indignation of some of his comrades, who charged that he had reported tunnels to the accused; that after some parleying on the part of Chickamauga with the guard, the prisoner made his appearance, when Chickamauga asked him to be taken out of the stockade, stating the reason for his request; that the prisoner refused to take him out, and ordered the guard (who had shown an unwillingness to treat the poor cripple harshly) to shoot him if he crossed the dead-line; that he did subsequently cross the dead-line, and the sentry, acting under the direct orders of the prisoner, shot him. Here, I submit, is a clear case of murder.

Before going further, it is proper to remark contradictions in the testimony of the witnesses to the Chickamauga affair appear only in the statement of the prisoner, and cannot be discovered by the closest scrutiny of the record. It is not a fact that two of the government witnesses represented the prisoner as having shot Chickamauga with his own hand; yet the prisoner's version of the evidence would make us believe this; and the supposed conflict of testimony is urged as an illustration of what he terms "the murky, foggy, indefinite and contradictory testimony" of the prosecution.

I will give the prisoner's ingenious version of the testimony, and then, as contrasting romance with reality, I will present the evidence as given in the record.

The prisoner says:

One witness, whom for his own sake, I will not name, inasmuch as his statements must have been and were recognized by every one who heard him as undeserving the least belief, describes him ("Chickamauga") as a kind of weakly man, who, when I entered the stockade one day, wormed around me, saying that he wanted to go out in the air; whereupon Captain Wirz wheeled again, pulled out a revolver and shot him down.

Now, the sober fact is, that this witness, in describing and characterizing the prisoner who was shot, mentions no circumstance which can warrant the supposition that he intended to testify as to the Chickamauga affair. I read the continuation of the same narrative:

Do you know who the man was that the prisoner shot? He belonged to the 8th Missouri; they called him "Red" in the regiment. I knew him at Memphis.

A still different version of this transaction is given in a more laconic and reckless style by another witness:

Did you ever see Captain Wirz shoot any man? Yes, sir. When? About the first day of April, I think; shortly after he took command there. State the circumstances of the shooting. Captain Wirz was coming in the south gate one day. A sick man, as I took him to be—a lame man—asked Captain Wirz something, and Captain Wirz turned round and shot him.

Here again no one has ever pretended that the case is identical with that of Chickamauga, the latter occurring in June and the former in April. When the evidence of the record is treated in this manner, no wonder that it becomes, in the language of the prisoner's statement, "Murky, foggy, indefinite and contradictory."

It is a little remarkable, too, that after having introduced one of these witnesses as being "reckless" in his style of narration and the other as "undeserving the least belief," the prisoner in a later part of his statement dismisses them both

with a concession that they were sincere in their testimony, for he says:

The two men who swore they saw me shoot the prisoner with my own hand were probably led to make that statement from having seen me draw my revolver in the manner I have described.

Let me now notice the prisoner's own version of this Chickamauga affair—a version which he gives us as the solution of the so-called irreconcilable testimony of the prosecution. The facts, as the prisoner would have the court believe them, and believing, accept as his exculpation, are given in his own language in this remarkable paragraph:

Will the court permit me to make a statement which may serve to explain all these conflicting accounts of the death of poor Chickamauga? On the evening in question, the sergeant or the officer of the guard came to my quarters and stated that there was a man within the dead-line jawing with the sentry and refusing to go outside, and that there was a crowd of prisoners around him and a good deal of disturbance. I rode my horse down to the stockade, dismounted outside, and went in. There I found things as they had been described to me. I went up to Chickamauga and asked him, in a rough tone of voice, what the hell he was doing there? He said he wanted to be killed. I took my revolver in my hand, and said in a menacing manner that if that was all he wanted I would accommodate him. I scared him somewhat and he was taken outside by some of the prisoners. I then, in his presence, and solely as a menace, told the sentry to shoot him if he came in again. I little thought that he would come back or that his comrades would permit him, after their hearing the order, to go once more across the forbidden line. I left the stockade, remounted my horse, and was on my way back to my quarters, when I heard the report of a musket. I hastened back and ran up to the sentry-box from which the shot had been fired. There is the simple history of the case, without any reserve or misrepresentation. The court, I am sure, will recognize all the marks and evidences of truth in it. It is consistent with itself and consistent with the average line of the testimony.

I confess that I was greatly surprised when this startling declaration was read for the first time in my hearing and in the presence of the court, three days ago. This explanation seems to me to admit so fully the guilt of the prisoner that if it were the mere hypotheses of counsel, adopted as the last

resort of a desperate defense. I would decline to hold the prisoner responsible for such authority to make. But here we have the solemn statement of the prisoner, submitted without solicitation and after due deliberation. Charged with the gravest criminality in reference to an occurrence which is attested by a score of witnesses, he volunteers his own explanation, which is taken down from his lips, revised and signed by his own hand, and read before the court in his presence, with no attempt on his part at disavowal, when the impulse which prompted such self-criminating candor had had time to give place to a circumspect reserve. Under these circumstances, I believe I am treating the prisoner with entire fairness when I ask the court to hold him responsible for his own words and let him be the witness of his own guilt. I submit that his explanation of this occurrence, so far from exculpating him, exhibits his guilt scarcely less effectively than the evidence of the prosecution.

The main fact upon which the government insists is that the prisoner ordered the guard to shoot Chickamauga if he should cross the dead-line, and that in the act of crossing it, or immediately afterwards, this wretched imbecile was shot by the sentry in obedience to the prisoner's order. This is not denied in the statement of the prisoner, but is there fully admitted. It is admitted that the prisoner (I quote his own language) "told the sentry to shoot him if he came in again;" it is admitted that this order was not to be obeyed by the sentry, and that thus Chickamauga was killed. While conceding all this the prisoner seeks to shield himself under the allegation that the order was given "solely as a menace."

Yet he does not pretend that he gave the sentry any reason to suppose that the order was not to be obeyed; he does not pretend that the act of the sentinel in shooting was anything else than the natural obedience of a subordinate to his superior's order, which had every appearance of being imperative. When the guilty and murderous act is thus admitted, the criminal cannot seek refuge under his own allegation of an innocent intent, particularly when he acknowl-

edges that that intent was hidden within the recesses of his own mind and found no shadowing forth at the time in words or acts, but was contradicted by both. The prisoner's allegation of an innocent intent cannot overcome the conclusive presumption of the law, that "a sane man contemplates the natural and probable consequences of his own acts." When the motive of a man arraigned for crime shall be taken from his own lips, in contradiction of the obvious tendency of his acts, courts of justice will have become obsolete. It is admitted that the order was obeyed, and that thus "Chickamauga" lost his life. The obedience of the sentry and the death which resulted were the "natural and probable consequences" of the prisoner's self-confessed act, and as I believe that the order for the shooting of "Chickamauga" was unjustifiable and cruel, I see not how this court can do otherwise than declare that the prisoner, in this melancholy affair, incurred the guilt of murder.

Before leaving this subject, I cannot refrain from making a passing remark on the picture of the prisoner's brutality, as painted by his own hand; a picture in singular contrast with another self-portraiture embraced in the same statement. In recounting the "Chickamauga" affair, the prisoner says:

I went up to "Chickamauga" and I asked him, in a rough tone of voice, "what the hell he was doing there?" He said he wanted to be killed. I took my revolver in my hand and said, in a menacing manner, that if that was all he wanted I would accommodate him. I scared him somewhat, and he was taken outside by some of the prisoners.

How startlingly in contrast with this has the prisoner portrayed himself in another part of his statement. This is his language:

I do trust that this enlightened court will bear with me in my humble effort to convince it that while commandant of the prison at Andersonville I was not the monster that I have been depicted as being; that I did not cause or delight in the spectacle of the sufferings, woes and deaths of the Union prisoners, that I did not contribute to their sufferings; but that, on the contrary, I did

what little lay in my power to diminish or alleviate them, and to prove that, although I have been represented as little less than a fiend, "Heaven left some remnant of the angel still in that poor jailer's nature."

We are asked to believe that these two portraitures represent one and the same person. If it be so, then unfortunate was it for poor "Chickamauga" that his untutored mind did not comprehend that that fierce seeming man, who asked him in a rough tone of voice, "What the hell are you doing here?" was at that very moment yearning with compassion for his wretched condition. The poor crazy cripple little dreamed that the stern-spoken man, who, revolver in hand, said to him, "If you want to be killed I will accommodate you," was a "poor jailer," in whom the remnant of the angel was struggling to exhibit itself under great difficulties, a lover of mankind, in a very embarrassing position, but doing, as he says, "what little lay in his power to diminish or alleviate the sufferings of those around him;" a John Howard, forsooth, whose compassionate heart prompted him, as he tells you, to take out of the stockade all the drummer boys, in order that the little fellows might, in the enjoyment of purer air and healthful exercise, have a better chance of being restored to their yearning mothers and sisters at home. Alas for poor "Chickamauga," that he did not whisper in the ear of this rough-mannered philanthropist that he, too, crippled and insane though he was, had a yearning mother or sister at home. Who knows but that the suggestion might have won for "Chickamauga" a happier fate?

But the subject is too serious for satire. I submit that in the many features of this trial, showing with what abandon the prisoner gave rein to his malicious passions, the killing of poor "Chickamauga" is one of the most despicable and indefensible. The insane cripple had subjected himself to the wrath of his comrades, being led, by the promises of this accused, to turn traitor to them and disclose their means of escape. He had thrown himself upon the protection of his murderer. He had alienated himself from all his companions, while he had done everything to commend him in the sight

of the accused. Yet when fleeing from the just indignation of his comrades, which was so great that he even dared to trust his life in the hands of the guards, with death staring him in the face from the sentinel and from his outraged companions, he appeals to this accused, the only man who had the power to aid him in this terrible strait—the one of all others who was under an obligation so to do—and is rudely rebuffed by the man to whom he had rendered a service—brutally repulsed with a violence of manner and language which appears as vividly in the prisoner's own version of the transaction, as in that given by the witnesses for the prosecution—and is told to go back to this mob which is crying for his blood; or that if he did not do this, but remained within the dead-line, the sentry would shoot him. It was death to "Chickamauga" whichever way he went, and this accused must have known it, and must have intended it, else he would have led him out of that horrible place. With what conscience, then, can he ask you to believe him when he tells you he did not intend the death of "Chickamauga?" This court, I submit, in view of the evidence, must hold the prisoner responsible for the death of that miserable creature.

Having presented one of these cases at some length, one which I think will admit of no doubt, I will pass hastily over the evidence bearing upon similar cases, giving a brief analysis and reference to the testimony, leaving the court to arrive at its own conclusions.

William Bull testifies that on the 3d of June, at the north gate, he saw a man shot; that the prisoner came in at the head of a detachment, put three guards on the stoop, and ordered them to fire at the crowd to make them fall back; that one of the guards fired, and that the ball struck the man in the stomach, who was about 15 feet distant from the witness. W. W. Crandall states that on one occasion, he thinks it was in June, 1864, when the men were crowding around the south gate, the prisoner was there and thought they crowded too much. He ordered the sentry on the outside of the gate to fire, and repeated the order three or four

distinct times. The sentry fired and killed a man who was about five feet from the dead-line.

Jacob D. Brown testifies that on the 27th of July he saw the prisoner in the sentry-box near the brook; some of the prisoners were there getting water, and men would accidentally reach under the dead-line. The prisoner told the sentry if any man reached through the dead-line to get water to shoot him down. He had barely said the words when a prisoner reached through, and the sentry fired, the ball taking effect in the head, killing him instantly. Witness was close to him.

Joseph Adler testifies that some time in July the prisoner was standing in the sentry-box, when two or three men were at the brook after water; some got their hands beyond the dead-line, and the prisoner asked the sentry why he did not shoot, as it was no matter whether the man's whole body was over the dead-line or only a part of it; that if he did not shoot he would have him punished. The sentry thereupon shot the man in the right breast. He fell into the creek.

Bernard Corrigan testifies that a few days after the raiders were hung (which was on the 11th of July) a man was shot at the south gate. "We were going," he says, "for medicine; the man had two tin cups in his hands. Wirz told the guard if he did not keep the men back he would take him off and punish him. He repeated it, saying he had a gun. Wirz turned his back and started off, and the guard fired right among the crowd and shot this man.

Joseph R. Achuff states that in July they were carrying sick men to the gate; there was a great crowd there. The prisoner told the sentry if the men did not keep back to blow them through. The sentinel had his musket against a man's stomach, and drew back and fired, and killed a man from Pennsylvania.

Jacob D. Brown testifies that about the middle of August the prisoner ordered the sentinel to shoot men who were getting water from the brook, the men being much crowded. The

sentry fired and a man was shot in the breast, the wound being fatal.

Prescott Tracey states that in the month of August, 1864, he heard the prisoner order the shooting of a man who had just come in and did not know the rules and regulations; that he went to get a drink, and slipped and fell with his head about six inches over the dead-line; that the prisoner at the bar called to the sentry, "God damn your soul, why don't you shoot that Yankee son of a bitch?" The guard fired, the ball striking the man in the head and coming out at the back of his neck. He died in the creek.

We come now to notice that class of murders committed with prisoner's own hands. I shall here, as elsewhere, avoid all argumentation and present as briefly as possible the evidence of the witnesses, leaving the court to determine, in the light of the principles of law before mentioned, what amount of guilt attaches to this prisoner.

Your attention is called, first, to the death of a Union prisoner by beating with a pistol over the head, as given by the witness William Willis Scott. His evidence is as follows:

In one case, I was coming down after a bucket of water. I belonged way up in what they called the new stockade, on the north side. Captain Wirz was coming in; a sick man was sitting on the side of the bank; he asked Captain Wirz if he could get out. Captain Wirz turned around, gave him a kind of a sour look, and said, "Yes, God damn it; I will let you out," and with the revolver he struck the fellow over the head and shoulders several times. The fellow went to his tent then. On the third morning, I think, I made it my business to go down and see him; he was dead, he had died the night before. Think he died from the effects of the beating with the pistol. He was pretty badly bruised around the head and face. Captain Wirz beat him with the butt of the revolver which he had in his hand. He knocked him down the first blow. It was about the 25th or 26th of August, 1864. Can't give the man's name.

This witness is uncorroborated by any testimony presented, unless the evidence given by Patrick Bradley may refer to the same circumstance.

I leave it for the court to determine whether the accused

shall be found guilty under this testimony. There are given, with certainty, time, place and circumstance. The beating is shown to have been wanton, cruel and malicious, and wholly unprovoked.

The only element necessary to make the crime complete is the proof that death was the result of the wounds inflicted. Whether this may or may not be inferred from the circumstances, as narrated by the witness, the court must be the sole judge.

Murders Committed by the Prisoner With His Own Hand.

The prisoner is also charged with the murder of a soldier, by stamping upon and kicking him so as to cause his death. The evidence in support of this allegation is given by Martin E. Hogan :

I saw Captain Wirz, at the time the prisoners were being moved from Andersonville to Millen, take a man by the coat collar because he could not walk faster. The man was so worn out with hunger and disease, that if he had got the whole world I do not think he could move faster than he was going. Captain Wirz wrenched him back, and stamped upon him with his boot. The man was borne past me, bleeding from his mouth or nose, I cannot say which, and he died a short time afterwards.

The character of this witness, his intelligence and his facilities for observation, must impress the court with the fact that his testimony is entitled to more than ordinary weight. It requires no exercise of imagination, nor a resort to improbabilities, to justify the conclusion of guilt, remembering the character of the accused and his many acts of cruelty, which furnish confirmatory evidence not to be overlooked.

Another murder laid to the charge of this prisoner, as perpetrated by his own hand, is described by George Conway, who testifies :

I saw a man shot one day: he came down after water; no one was allowed to put their head or any part of their body under the dead-line. This man, probably not being acquainted with the rules, as many of them were not, who came in there after the rules were

read, put his hand in under the dead-line to get a cup of water, and the cup dropped from his hand. He put his hand under the dead-line to raise it up again, and Captain Wirz shot him, the ball taking effect in his head; he died almost instantly. Captain Wirz shot him; he was standing in the sentry-box. It was about the time the raiders were hung; I could not say whether it was before or after. The man was getting a cup of water out of the brook, when the cup dropped from his hand. Do not know his name; never saw the man before till I saw him that time.

The testimony of this witness on other points, as upon this, is clear and distinct, so much so that the counsel on cross-examination seemed to think it unnecessary to interrogate the witness with regard to this very important part of his testimony. He is uncontradicted, and must be believed.

The next instance of this kind to which your attention is called is given in the testimony of Felix De la Baum. I do not desire to discriminate among witnesses, as it might imply that some are entitled to greater credit than others. Disclaiming any such intention, I still must remind the court of the character of this witness, his manner of testifying, and the air of truth and candor with which he told his story. Upon this point I give his testimony entire and without comment.

On the 8th of July I arrived at Andersonville, with 300 or 400 other prisoners, most of them sick and wounded. We were brought up to Captain Wirz's headquarters; were drawn up in line, four ranks deep, and kept there for a considerable length of time, without any business being transacted. The guards had orders to let none of us go to the water. One of the prisoners was attacked with epilepsy of fits; he fell down; some of his friends or neighbors standing near him ran down to the creek after water, by permission of the guard, I suppose, because the guard was tied up by the thumbs for permitting them to do so. First I heard a shot fired without seeing who fired it. After hearing that shot fired, I looked down to the left, and I saw Captain Wirz fire two more shots, wounding two men. One of them was carried up near his headquarters, and in my opinion he was in a dying condition. The other was wounded, too; but I did not see him again. The one who was carried up near the headquarters was wounded in the breast. Captain Wirz had a revolver in his hand. I was perhaps 20 paces distant from him; am certain I saw Captain Wirz discharge the pistol in his hand. Did not, myself, see him die; but

he was evidently in a dying condition, judging by his appearance; never saw him again; we were not allowed to speak to the guard, and I could not make any inquiries. Captain Wirz asked the lieutenant of the guard, "Where is the guard who allowed this man to fall out of the ranks?" The guard was pointed out, and Captain Wirz ordered him to be tied up by the thumbs for two hours. After this, Captain Wirz pointed out the man, and said, "That is the way I get rid of you damned sons of bitches." I, myself, saw the man fall down: he had epileptic fits, and I was informed that the men ran after water for him. We had not received any water all night; they kept us all night in the cars; on the way down from Macon to Andersonville we had no water. When we passed the creek we wished to get some water, but we were not allowed to have any. We were kept at the headquarters of Captain Wirz for about two hours, without receiving a drink. We were then divided into squads and transported into the stockade. He was, in my opinion, in a dying condition. I judged so from his heaving up and down, and from his gasping for breath. I have seen many men on the battlefield in the same condition, and they always died shortly afterwards. The blood was running out from his breast, or the middle of his body, somewhere. All I heard of it after was from a rebel sergeant—I think his name was Colby—he said the man died.

There is evidence given by Hugh R. Snee of a double murder committed outside the stockade, on the way from the stockade to the depot, and which occurred a little after dark, the victims being Union prisoners, who were attempting to make their escape among those going out for exchange.

The circumstances, as given by this witness are, that in September, 1864, when some men were going out for special exchange, there were two men belonging to an Iowa regiment who fainted between the prisoner's headquarters and the depot; they fell out of the ranks, and a man ran back and wanted to know why they came out. They said they wanted to get out of prison. A man said, "I will help you out damned soon." The witness heard six discharges from a pistol, and heard a cry as if some one was hurt. Presently a rebel officer, he thinks a lieutenant, coming along, remarked, "It was a brutal act." Some one asked him who it was, and he said, "The captain." He also said, "One of them is dead." Witness thought it was Captain Wirz's

voice which he heard through the crowd, but could not state positively.

There is still other testimony of murders committed by the hand of this prisoner, as given in the testimony of Willis Van Buren and James H. Davidson. I desire only to call the attention of the court of the witness Snee, and the two first named, as bearing upon this branch of the case, without venturing to express an opinion as to the guilt of the prisoner.

There is still one other case of deliberate murder by the hand of this accused. It is that related by George W. Gray. The court will remember that during the examination of this witness there occurred one of the most impressive episodes of this trial, which must not be overlooked or forgotten in judging of the truth or falsehood of George W. Gray's narration. He has been severely attacked by the prisoner in his statement to the court, although no contradicting evidence was introduced and no circumstances given which could raise a reasonable doubt for the benefit of this accused. I call the attention of the court to the entire evidence of this witness in relation to the occurrence. He testifies:

I was a prisoner of war there. Wirz shot a young fellow named William Stewart, a private belonging to the 9th Minnesota infantry. He and I went out of the stockade with a dead body in the dead-house, Captain Wirz rode up to us and asked by what authority we were out there. Stewart said we were there by proper authority. Wirz said no more, but drew a revolver and shot the man. After he was killed the guard took from his body about \$20 or \$30, and Wirz took the money from the guard and rode off, telling the guard to take me to prison. Captain Wirz had in his hand when he shot that soldier a revolver, whether a navy pistol or not I don't know; it was a large pistol. The ball took effect in his breast. He died right there where he was shot; was not at the time attempting to make my escape; but it was my intention to do so if I could; was not attempting it at that time, nor was Stewart.

I called upon the prisoner to stand up for identification. The prisoner, who was lying on a lounge, partly raised himself, turning his face to the witness. I said, do you recog-

nize that man as the person who shot your comrade? He said, That is the man. The prisoner attempted to say something in contradiction of the witness, but was not permitted by the court. I requested the prisoner to stand upon his feet. The prisoner having complied with the request, the witness looked at him and said, "I think that is the man." I took him to be a German or a foreigner by his talk, for this reason, when I was put in the stocks he said to me, "Gott tam you, I fix you." For that reason I took him to be a foreigner, or a Dutchman."

This impression of the scene (one of the most remarkable occurring during the trial), as the witness Gray confronted the murderer of his companion, was such as this court and all who were present will never forget. The witness was cautioned to be careful, and told that it was a very serious matter about which he was to speak; but there was no trepidation, no hesitation, no doubt discoverable in his manner, and I think all who heard him must have felt that he spoke only the truth when he said, "that is the man."

You are told on the part of the defense that this witness is not to be believed, and among the reasons it is urged that on cross-examination he said that he thought the prisoner rode a roan horse, while the general testimony is to the effect that the prisoner usually rode a gray mare, and that he afterwards saw him on a sorrel horse. I would remind the court that Mr. Gray is not the only person who describes the prisoner as riding a roan horse, and I need hardly remind counsel so prolific of negative evidence, that men who usually ride gray horses have been known to ride sorrel horses.

Another reason urged why Gray's story is not to be believed is, that it is improbable. A complete answer to this is found in the conduct of this accused towards the prisoners of war in his custody. No act of brutality was improbable with him, no provocation was needed, but, like the infamous Vargas, killing with him was but a pleasant recreation, and seemed the business of the hour.

Again you are told that Gray is not to be believed because he mentioned a circumstance of cruelty (the bayoneting of soldiers) which was brought out by no other witness. Is this so surprising a fact that this court must reject the whole evidence of a witness otherwise supported? The whole record has been made up, not by calling a few witnesses who narrate all that occurred at Andersonville, but by calling very many, each of whom brings with him the knowledge of facts which, from the very necessities of their surroundings, were not always in the possession of others. Gray's statement of the cruel bayoneting of our soldiers at Andersonville is entirely consistent with the treatment they met from the beginning to the end of that horrible prison.

I insist, gentlemen, that the evidence of George W. Gray is entitled to your highest consideration, and although it alone fixes upon the prisoner at the bar guilt which can only be expiated by the highest punishment known to the law, you cannot resist the proof.

I have thus, without regard to the evidence under the first charge, presented the evidence under charge two, showing that the accused while acting as the Commandant at Andersonville prison, deliberately, wantonly and maliciously destroyed the lives of eighteen prisoners of war in his custody. I confess myself too much overcome with the melancholy details of this trial and its frightful disclosures to dwell longer on so sad a theme.

If this accused still answer that admitting the facts charged, he did these things in the exercise of authority lawfully conferred on him, and that what he did was for the safety of the prisoners, I answer him in the language of Lord Mansfield in an important case:

"In trying the legality of acts done by military officers in the exercise of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form if their intention appears by the evidence to have been upright. It is the same as when complaints are brought against inferior civil magistrates, such as justices of the peace, for acts done by them in the exercise of their civil duty. There the prin-

cial inquiry to be made by a court of justice is how the heart stood, and if there appear to be nothing wrong there, great latitude will be allowed for misapprehension or mistake. But, on the other hand, if the heart is wrong, if cruelty, malice, or oppression appear to have occasioned or aggravated the imprisonment, or other injury complained of, they shall not cover themselves with the thin veil of legal forms, or escape under the cover of justification the most technically regular from that punishment which it is your duty to inflict on so scandalous an abuse of public trust" (Wall v. Macnamara).

May it please the court, I have hastily analyzed and presented the evidence under Charge Second. If we had not traveled through the history of those long, weary months of suffering, torture, starvation, death, and become familiar with each day's roll of those who passed away, the mind could not contemplate this last though briefer roster of the dead without feeling of the utmost horror. Mortal man has never been called to answer before a legal tribunal to a catalogue of crime like this. One shudders at the fact, and almost doubts the age we live in. I would not harrow up your minds by dwelling farther upon this woeful record. The obligation you have taken constitutes you the sole judge of both law and fact. I pray you administer the one and decide the other, meting out to those involved in this crime of the universe all justice, without fear, favor, or partiality, and without regard to position, high or low, of those proved guilty.

October 24.

The Prisoner's Counsel asked that Dr. C. M. Ford and Dr. John C. Bates make in the presence of the court a physical examination of the prisoner. The Judge-Advocate consented and it was so ordered by the court.

<p><i>Dr. Ford.</i> Examined the prisoner's right arm today; it is swollen and ulcerated; portions of the bone are dead; the arm must have been broken. At present he would be incapable of knocking a man down with it or</p>	<p>lifting a heavy instrument. The left shoulder is injured, too; this would prevent the perfect elevation of the arm, but not striking out with the forearm below the elbow; the little finger and the next on his right hand are</p>
--	--

slightly contracted but not permanently; find traces of scurvy on his legs. Do not think him strong enough today to do an act of violence; can't say with any certainty what his physical condition was a year ago.

Capt. Wirz. In 1863 I got a furlough and had my wound operated on in Paris; the surgeon thought all the dead bone had come out, but on shipboard four months later the wound broke

open and has continued so since February, 1864.

Dr. Bates. Saw prisoner at Andersonville but did not examine him professionally; noticed he had difficulty with his right arm; the medical men there thought it was a syphilitic taint. Agree with Dr. Ford as to his present condition; for him to use a pistol or any instrument to strike a blow with his right arm, would injure him seriously.

THE VERDICT AND SENTENCE.

October 24.

Today the COURT announced its decision as follows:

It finds the accused, Henry Wirz, of Charge I, "Guilty,"¹⁹ viz.: that he did combine, confederate and conspire with John H. Winder, Richard B. Winder, W. S. Winder, R. Stevenson, and others, names unknown, engaged in armed rebellion against the United States, against the laws of war, to impair and injure the health, and to destroy the lives of large numbers of Federal prisoners, to-wit: 45,000 at Andersonville.

Of Specification first to Charge II, "Guilty."

Of Specification second to Charge II, "Guilty."

Of Specification third to Charge II, "Guilty."

Of Specification four to Charge II, "Not Guilty."

Of Specification five to Charge II, "Guilty."

Of Specification six to Charge II, "Guilty."

Of Specification seven to Charge II, "Guilty."

Of Specifications eight and nine to Charge II, "Guilty."

Of Specification ten to Charge II, "Not Guilty."

Of Specification eleven to Charge II, "Guilty."

Of Specification twelve to Charge II, "Guilty."

Of Specification thirteen to Charge II, "Not Guilty."

And the Commission does therefore sentence him, the said Henry Wirz, "to be hanged by the neck till he be dead, at such time and place as the President of the United

¹⁹ The names of Jefferson Davis, James A. Seddon, Howell Cobb, and several others were added to those specified in the charges, but as they were not in the amended complaint or indictment, the government in affirming the general finding very properly ignored this unnecessary and unauthorized addition.

States may direct, two-thirds of the court concurring therein.”

“November 3, 1865.

“The proceedings, findings, and sentence of the court in the within case are approved, and it is ordered that the sentence be carried into execution by the officer commanding the Department of Washington on Friday, the 10th day of November, 1865, between the hours of 6 o'clock a. m., and 12 o'clock noon.

Andrew Johnson, President.”

THE EXECUTION.

Washington, D. C., Nov. 11, 1865.

I have the honor to report that the sentence and orders of the President in the case of Henry Wirz have been duly executed (between the hours of 10 and 11 a. m.), yesterday, November 10, and his body has been interred by the side of Atzerodt in the Arsenal grounds.

To the Adjutant General of the Army.

C. C. Augur,

Major General Commanding
Department of Washington.

THE TRIAL OF LEONARD SIMONS AND EBER WHEATON FOR LIBEL, NEW YORK CITY, 1823.

THE NARRATIVE.

A couple of Jew pedlars in New York City in the early part of the last century, had bought, on credit, a quantity of jewelry from merchants there, which they took with them to the western states to sell. But when they got back they told a story of having been robbed on the trip, which obliged them they said to take advantage of the insolvent law. When they had gone through this process, they went into the business of manufacturing and selling cigars in the city. This aroused the ire of more than one of their creditors, who published in a daily newspaper an article and printed in the form of a handbill some doggerel verses which insinuated that there had never been any robbery; that the Jews had never paid a cent of their debts, although they were in possession of plenty of money; that they were still selling some of the jewelry which they alleged had been stolen and that in their cigar store they sold cheap cigars with counterfeit labels pretending that they were imported cigars; also they kept an unlicensed pawnshop in which they received and sold stolen goods.

And when the writers and publishers of these charges were indicted for libel and placed on trial they had little difficulty in persuading the jury that the charges were true and they were very promptly acquitted.

THE TRIAL.¹

In the Court of General Sessions, New York City, May, 1823.

HON. RICHARD RIKER,² *Recorder.*

¹ Wheeler's Criminal Cases. See 1 Am. St. Tr., 108.

² See 1 Am. St. Tr., 361.

May 16.

Hugh Maxwell,³ District Attorney. *W. M. Price*⁴ and *David Codwise*,⁵ for the People.

John Anthon,⁶ *Robert Bogardus*⁷ and *Mr. Rogers*, for the Prisoners.

Leonard Simons and *Eber Wheaton* were charged with writing and publishing an advertisement in a paper called the *New York American*, on the 20th day of March, 1823, reflecting upon the conduct of Messrs. Gordon and Wallach. They were also charged with writing and publishing a song, on the 21st day of March, 1823, reflecting also upon the reputation of Gordon and Wallach.

A number of facts were set forth in the indictment, by way of inducement, viz., that the prosecutor Gordon and Samuel Wallach were pedlars, and had jointly purchased of Stephen Reed and Hempstead and Chandler, a quantity of jewelry; and that Gordon had traveled into and through the western states for the purpose of vending the said jewelry, and was robbed; that he returned in consequence of the robbery, and was obliged, with his partner, Wallach, to take the benefit of the acts of insolvency; and that they compromised with their creditors for five shillings in the pound, and applied and took the benefit of the act, in Putnam County; that afterwards Gordon manufactured cigars at the corner of Mott and Pump streets; that Wallach kept a grocery store at 161 Chatham street, where a quantity of the cigars were vended; and that Gordon took an oath and made a complaint before the Mayor, touching the license of Simons and Wheat-

³ See 1 Am. St. Tr., 62.

⁴ See 5 Am. St. Tr., 360.

⁵ CODWISE, DAVID. Graduated Columbia, 1798. LL. D. Lafayette College, Pa., 1855. Lawyer in New York City, 1823-1864. Master in Chancery. Died in 1864. See Columbia Univ. gen. cat., 1754-1912.

⁶ See 2 Am. St. Tr., 786.

⁷ BOGARDUS, ROBERT. (1771-1841.) Soldier, lawyer, State Senator. Practiced law for half a century in New York City, where he died.

on, and that the prosecutors, Gordon and Wheaton, were Jews.

The following was the advertisement and song set out in the indictment:

TO HAWKERS AND PEDLARS.

For sale, a large and extensive assortment of jewelry, etc., saved from the wreck of the sloop "Insolvency" and imported to this city about four years ago from Putnam Corner, Westchester: Among which are about \$9000 worth of gold chains, seals and keys, musical snuff boxes, elegant pearl breast pins, gold finger rings set with stones, and other articles too tedious to mention; formerly purchased of Stephen Reed, Maiden-Lane. Also, an extensive assortment of gold and silver thimbles, pencil cases, etc., purchased of the late firm of Hempstead & Chandler. The above articles have properties peculiar to themselves, and which render them particularly valuable to pedlars who go into the western states; viz., the owner may be robbed of them, and still retain them in his possession; and as they have cost me nothing but a few hard oaths, which I care little about, I offer them cheap for old silver, or in exchange for old horses, suitable for cavalry.

Also, a large and showy assortment of "Real Havana" cigars, imported weekly in large boxes, marked S ✂ W, from the corner of Mott and Pump streets. And last of all, though not least, two large wooden Jews' harps, with leather or elastic tongues, particularly useful to gentlemen in the grocery business. These Jews' harps possess the advantage of scandalizing our neighbors or competitors in business; and yet, of playing their notes so slyly and harmoniously, that, when sworn to by the friend of the owner, even persons in authority will, for a moment, be deceived by their syren tones.

The above articles are all of the best quality, and will be warranted against all seizure, as being stolen property pawned without license; and, as I feel great sorrow for my neighbors, whom I have myself maliciously involved in difficulty, I think the citizens of New York, and particularly those in the vicinity of Chatham street, are in duty bound to come and purchase; but if they should think and do otherwise, I know my own remedy; those to whom I am indebted in the sum of \$28,000, must take five shillings in the pound, or I will again go up to Putnam Corner. Apply to the subscriber, 163 Chatham street, near the corner.

L. Simons.

New York, March 20th, 1823.

In the first count the advertisement was set out (with innuendos). The second count continued:

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Leonard Simons and Eber Wheaton, mali-

ciously and wickedly, contriving and intending, severally, to scandalize, vilify, and defame the said Leonard Gordon, and bring him into public contempt, ridicule, infamy and disgrace, and to disturb, molest and disquiet him the said Leonard Gordon, on the twentieth day of March, in the year of our Lord one thousand eight hundred and twenty-three, with force and arms, at the city of New York, in the county of New York aforesaid, wickedly, maliciously and unlawfully, did, severally, compose, print and publish and caused to be composed, printed and published of and concerning the said Leonard Gordon, a certain other false, scandalous, malicious and defamatory libel, of the tenor following, to-wit. Song, "Let the galled jade wince." Dey call me (the said Leonard Gordon meaning) Mose Shylock, cause I (the said Leonard Gordon meaning) livsh in de street, vere I (the said Leonard Gordon meaning) play de honest man mit every vun I (the said Leonard Gordon meaning) meet; and ash dey say I (the said Leonard Gordon meaning) keep vun shtore, I (the said Leonard Gordon meaning) say 'tis vun dam lie, I (the said Leonard Gordon meaning) don't keep no shtore at all, de goods I (the said Leonard Gordon meaning) only puy—mit my (meaning his, the said Leonard Gordon's) finger rings and oder tings, snuff boxes, watch chains, and watch strings. I (the said Leonard Gordon meaning) pought vun lot of jewels (meaning the jewelry purchased by the said Leonard Gordon and Samuel Wallach, from the said Stephen Reed, as aforesaid); twash some time ago, "de horses eat dem jewels up," I (the said Leonard Gordon meaning) tell de cred'tor so; and dem dat vont pelieve me (the said Leonard Gordon meaning), and say I (the said Leonard Gordon meaning) tell vun lie, vy dem I (the said Leonard Gordon meaning) cannot understand, I (the said Leonard Gordon meaning) pass dere language py—mit my (meaning his the said Leonard Gordon's) finger rings, etc. Dey call me (the said Leonard Gordon meaning) for de witness, against Christians; I (the said Leonard Gordon meaning) den shwear, vat ish good for mine own (meaning his, the said Leonard Gordon's) self; vat ish not, I (the said Leonard Gordon meaning) cannot hear; de ting vats for my (meaning his the said Leonard Gordon's) interest, I (the said Leonard Gordon meaning) know always all apout, den I (the said Leonard Gordon meaning) shwear dat plack ish vite, a whale ish vun shmall trout—mit mv (meaning the said Leonard Gordon's) finger rings, etc., etc. Which said last mentioned scandalous and defamatory libel, they the said Leonard Simons and Eber Wheaton, afterwards, to-wit, on the same day and year last aforesaid, at the city and county of New York, aforesaid, wickedly, maliciously and unlawfully, did, severally, distribute and deliver, and caused to be distributed and delivered, to and amongst divers citizens of this state; and did, severally, with loud voices, and in a public, open and Indicrous manner, in the presence and hearing of divers citizens of this state and other persons, speak, sing, utter, publish, recite and pronounce, and cause to be spoken, sung, uttered, published, recited and pronounced, to the great damage, etc.

"Let the galled jade wince."

I pought vun lot of jewels, twash some time ago,
 "De horses eat dem jewels up," I tell de cred'tor so;
 And dem dat vont pelieve me, and say I tell vun lie,
 Vy dem I cannot understand, I pass dere language py.
 Mit my finger rings, etc.

Dey call me for de vitness, against Christians; I den shwear,
Vat ish good for mine ownself; vat ish not, I cannot hear;
De ting vats for my interest, I know always all apout,
Den I shwear dat plack ish vite, a whale ish vun small trout.
Mit my finger rings, etc.

The advertisement and song was said to be in answer to an advertisement which appeared in the paper the day before in the following words:

"For sale, or to be exchanged for night-caps, a bagatelle table, a few sets of old dominoes, two packs second-hand playing cards, very much used since the first of May last; two night lamps, a few representations of the planet Venus—and, finally, the effects of proof positive, in French. Apply in Chatham street, near the square, to Samuel Wallach."

John W. Palmer. Am publisher of the American; on 20th of March, 1823, Wheaton brought to the office of the American, the advertisement set out in the indictment; called the next day upon Wheaton at the request of one of the counsel of Gordon in relation to it, and received assurances from him, that he was the author, and would take the responsibility of it upon himself; Wheaton, at the same time, recited the whole or part of the song set forth in the indictment.

Mr. Maxwell, in order to identify the song, handed it to the witness, and proposed to inquire of him, whether the song Wheaton recited to him was the one now produced. *Mr. Price* objected and

contended the witness ought to repeat the words of the song recited to him by Wheaton, and not by reading the printed song ascertain whether it was the same as that recited.

The COURT decided that the printed song might be handed to the prisoner; that in most cases it would be impossible for any person to recollect the words of a trifling song repeated to him some weeks before, and permitted the song to be handed to the witness.

Mr. Palmer. It is the same song recited to me by Wheaton; it was proved by several witnesses that the song had been written by one Ely, and a number had been left in Simons and Wheaton's store; and that Wheaton had

read it to several, but that Simons had no agency in either the advertisement or the song; except so far as handing one of the latter to a neighbor who had requested one.

Mr. Anthon contended that as this was a joint prosecution, it could not be sustained, where it appeared, by the evidence, one of the parties was not implicated, and referred to 2 Burr, 985, 986. And that the jury ought to be instructed to find a verdict for Simons, and he made a witness for Wheaton, the other defendant.

The COURT observed that criminal prosecutions were joint and several in their nature, except those of riots and conspiracies, which were joint; that the evidence against Simons was, that he had handed one of the songs to a neighbor; this was sufficient to carry his case to the jury, and put him upon his defense.

THE TESTIMONY FOR THE PRISONERS.

John Reed. Gordon and Wallach had purchased of me eight or nine thousand dollars' worth of jewelry on credit. Gordon traveled into the western country for the purpose of vending it, and returned with a story, that he was robbed under singular circumstances. I wrote a letter to a gentleman in the western country, and received an answer that the robbery was never heard of there. Gordon and Wallach arrived in this country from England in 1812, in insolvent circumstances; they suddenly grew rich, and made all their

property over to Thomas Hudson and Thomas Moffat, two foreigners, to the amount of \$21,212; their application to Judge Garrison of Putnam County, for relief, under the insolvent law, was clearly fraudulent; they had never paid me one cent of my just demand against them; their subsequent conduct was full of suspicion; they entered immediately after their discharge into trade; Wallach has a full store, and Gordon an extensive cigar manufactory. Large quantities of jewelry are found in their possession which I ascertained to

be some of that stock purchased of me. The facts charged as being libellous in relation to the cigars are true; counterfeit marks and labels had been put upon the boxes, and sold as Spanish cigars.

THE SPEECHES TO THE JURY.

Mr. Anthon contended they had made out a complete justification—all the charges and insinuations in the matter charged to be libellous, were proved to be true. That a more shameful and barefaced system of fraud had never been practiced and exposed in a Court of Justice than that proved upon Gordon and Wallach. The former severity of the law in relation to libel had passed away. The greater the truth, the greater the libel, was a principle long since exploded, not only in this country, but also in England. The greatest latitude had been given to discussion by the article of our Constitution; and a person now might freely and securely write and speak truth with good motives and justifiable ends. It was the duty of the defendants to expose the frauds of Gordon and Wallach.

Mr. Price. The gentleman who preceded me, has justly told you that the rigid rule of law formerly adopted in the English courts, and our own, that the greater the truth, the greater the libel, was now exploded; and that the truth might be given in evidence. But he has not dealt fairly with you; he should have told you, that in some cases of libel even the truth of the matter would be no justification; for the act, the principles of which are engrafted in your new Constitution, requires, that it should further be made satisfactorily to appear, that the publication was made with good motives, and for justifiable ends. Could it be endured for a moment, that the personal defects or infirmities of an individual should be made the subject of newspaper animadversion? That because a man had been so unfortunate as to lose an eye, or an arm, that he should be held up to the public as an object of scorn and reproach! The publication might be true; but it could not possibly be made with good motives, and for justifiable ends. So if one of your fellow citizens is reduced by

misfortunes to the necessity of applying for the benefit of the insolvent act, shall he be exhibited in a censorious and ridiculous point of view? The gentleman contended that these defendants stand justified, because Gordon was the aggressor; and that because he made the first publication, they had a right to libel him. Are you willing that it should be established as the settled law in a community where law prevails, that one man has a right to commit an assault and battery on his neighbor, because his neighbor had committed the same offense on him? Your good sense, I am convinced, revolts at a doctrine so preposterous—a doctrine fraught with so much evil. If you acquit these defendants of these libels, you ruin the character of the prosecutor forever; his neighbors may make and reiterate, over and over again, the scandalous and malicious charges contained in these publications, with impunity. Is it not cruel in the extreme, thus to put this prosecutor, who is a stranger among us, on his trial for an offense so serious?

Here it is said, that we have not examined him as to the robbery; and therefore, it is to be presumed that it never took place. And yet, the gentlemen themselves produced before us his affidavit and inventory, from Putnam, containing a particular account of this robbery. Who has informed you, and who dares, under oath, inform you, that the affidavit is false? I put the question to Mr. Reed, distinctly, whether he would undertake to swear positively, that Gordon was not robbed; and his answer was, that he could swear to no such thing. The oath of Gordon, therefore, stands uncontradicted. The main charge against him in these publications is, that he is guilty of fraud and perjury; and if you think that he is guilty, you ought to pronounce a verdict for the defendants; but if not, it is your duty to convict them. But I beg of you, gentlemen, to make his case your own. He is a stranger; and though he may not be a member of the same church to which either of you may belong, though he may belong to a religious sect, which in times past, bigotry and intolerance have proscribed, yet, in this en-

lightened age, and under your new Constitution, no difference is made between Jew and Gentile. The law equally secures the rights of all, and affords to every citizen equal protection. And when an individual is thus placed before you, it is his right to demand, and it is the boast of our civil and political institutions, that he shall receive, the same protection, and the same favor, as if he was a member of the same church, or society to which you belong. I implore you, on this occasion, to interpose in favor of a stranger in our country, and ask you not only to protect him, but by your verdict, to teach these defendants that they cannot violate the law of the land with impunity.

THE JUDGE'S CHARGE.

RECORDER RIKER, after recapitulating the testimony, stated that the evidence against Simons was insufficient, and that it would be their duty to acquit him—observed that the question for the jury to try, was whether the other defendant, Eber Wheaton, was guilty of publishing a libel, as set forth in the indictment. It was satisfactorily proved that Wheaton carried the advertisement to the office of the *New York American*, and paid for its insertion in that paper; he was, therefore, both the writer and the publisher. It was also proved that he recited the song to Mr. Palmer and others; and a publication of it is therefore fully made out. If, therefore, the advertisement and the song be libellous, he is guilty.

It has been contended, by the counsel for the defendants, that as Gordon published a scurrilous advertisement against Simons, that it afforded a justification to the publication, to the advertisement and song made in answer; and in support of this position, Pasquin's case, decided before Lord Kenyon had been referred to. That case was an action for damages, and had but little application to the case now before the court. The rule formerly adopted in relation to libels, both in this country and in England, was, that the greater the truth, the greater the libel;

but, by a declaratory act of the Legislature, it is enacted "that in every prosecution for writing or publishing any libel, it shall be lawful for the defendant upon the trial of the cause, to give in evidence, in his defense, the truth of the matter contained in the publication charged as libellous; provided, always, that such evidence shall not be a justification, unless on the trial it shall be made satisfactorily to appear, that the matter charged as libellous, was published with good motives, and for justifiable ends." Rev. L. vol. 2, p. 554.

The new Constitution declares that in "all prosecutions, or indictments for a libel, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged to be libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine both the law and the fact." Cons. art. 7, p. 19. It was a salutary law and wholesome regulation of the press; every man might now publish truth with good motives and for justifiable ends, and whether the matter charged was libellous or not, was now the undisputed province of the jury to determine. It was not, however, sufficient that the matter charged as libellous was true, it must be made with good motives and for justifiable ends. Some people were deformed in body, and defective in mind. Could it be tolerated, that these imperfections might be published to the world, and the libeller defend himself by a plea that it was done with good motives and for justifiable ends? And in the case put by the counsel for the prosecution, as mankind were subject to accident and misfortune, suppose they should lose an eye or an arm, can it be permitted that his infirmities may be published, and himself held up to scorn and reproach, and a defense set up that it was done with good motives and for justifiable ends? In each of these cases, the facts might be true, but it is obvious they could not be made with good motives. The only effect such publications could have, would be to inflame the passions and provoke breaches of the peace. Many persons were unfortunate in business, and had recourse to the insolvent laws for relief.

It is not to be expected that others may publish and hold them up as objects of reproach to the world. No such publications can come within the meaning of a publication with good motives and for justifiable ends. There are some subjects the world have no business with; whether the publication of them, therefore, are true or not, cannot avail the prisoner, because they ought not to be published at all. The jury, after a dispassionate consideration of all the circumstances in the case, must determine, in the first place, how far the matters charged in the publication are shown to be true; and in the next place, whether it was made with good motives and for justifiable ends; the jurors in this case are peculiarly the judges of the law, as well as of the fact; and if they should believe that publication was made with good motives and for justifiable ends, it would be their duty to acquit.

The *jury* returned a verdict of *not guilty* for each of the prisoners.

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WYLIE, ANDREW

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